

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

AND

THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

This Memorandum of Understanding (MOU) is made and entered into by and between The United States Department of Labor's Wage and Hour Division (WHO) and the South Carolina Department of Employment and Workforce (DEW), together collectively referred to as the "the agencies" or "the parties."

The parties agree to enter into this MOU with the following specific and mutual goals:

- To provide clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders.
- To enhance enforcement by sharing information consistent with applicable law.
- To provide cross-training of staff so that employees of DEW and WHO understand the responsibilities of each agency. A better understanding of each agency's areas of responsibility will improve customer service to the public by limiting the number of referrals that are made for issues that fall outside the respective agency's jurisdiction.
- To develop ongoing communication to address bad actor employers and maximize agency resources through a streamlined referral process.
- To help employers understand their obligations through joint education and outreach on the Fair Labor Standards Act, the Payment of Wages Act, and federal and state child labor rules.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of South Carolina. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest.

This MOU is intended to memorialize this understanding between WHO and DEW. This MOU is a voluntary agreement that expresses the good-faith intentions of the parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This MOU outlines procedures to be followed by the parties in working together to address the need for customer referrals, information sharing, cross training of staff, and outreach between the parties and with the public.

Agency Responsibilities

WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. The Wage and Hour Division enters into this MOU under the authority provided by 29 U.S.C. § 211(b), which authorizes WHD to cooperate with State agencies charged with the administration of State labor laws. Nothing in this MOU limits WHD's enforcement of these and other statutes.

DEW is responsible for the administration and enforcement of South Carolina's unemployment insurance laws (Title 41, Chapters 27-41 of the South Carolina Code). Additionally, DEW is responsible for the administration of federal programs that provide funding and services to help individuals obtain the necessary training to prepare for the workforce and for businesses to meet their need for skilled workers.

Contacts

- The agencies will designate a contact person responsible for coordinating the MOU activities. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
 - o As of November 2019, WHD's contact person is Community Outreach and Resource Planning Specialist Colin Trimble.
 - o As of November 2019, DEW's contact person is Deputy General Counsel Paul Famolari.
- The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the MOU.
 - o As of November 2019, WHD's representative is Community Outreach and Resource Planning Specialist Colin Trimble.
 - o As of November 2019, DEW's representative is Deputy General Counsel Paul Famolari.

Enforcement

Where appropriate and to the extent allowable under law,

1. The agencies may make referrals of potential violations of each other's statutes.
2. The agencies may share information regarding the outcome of investigations resulting from an agency referral.

Effect of Memorandum of Understanding

1. This MOU does not authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the parties to expend appropriations or enter into any contract or other obligation.

2. By entering into this MOU, the agencies do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.
3. Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions.
4. This MOU contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or be binding upon the parties. This MOU is not intended to confer any right upon any private person or other third party.
5. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations. This MOU also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
6. This MOU will be executed in full compliance with the Privacy Act of 1974, *the Freedom of Information Act*, *the Federal Records Act*, and any other applicable federal and state laws, including, but not limited to:
 - o The Privacy Act of 1974, 5 U.S.C. § 552a;
 - o The Family Privacy Protection Act, S.C. Code Ann. §§ 30-2-10, *et. seq.*;
 - o The South Carolina Department of Workforce Law, S.C. Code Ann. § 41-27-10, *et. seq.*, including §§ 41-29-150 through 170;
 - o Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information, 20 C.F.R Part 603;
 - o Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Public Law 107-347;
 - o Tax Information Security Guidelines for Federal, State and Local Agencies, IRS Publication 1075;
 - o Office of Management and Budget M-07-16;
 - o South Carolina Department of Employment and Workforce Personal Identifying Information (PIT) Handling and Confidentiality Policy;
 - o The Rehabilitation Act of 1973 as amended, 34 C.F.R. § 361.38; and
 - o Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101, *et. seq.*

Exchange of Information

7. It is the policy of WHD and DEW to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with WHD's and DEW's own statutory obligations and enforcement efforts. It is WHD's and DEW's view that an exchange of information in cases in which both entities are proceeding on essentially the same matter is to our mutual benefit. There is a need for WHD and DEW to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure. As a result, the Parties agree, upon written request, to provide certain information, including individual employee or employer names, addresses, phone numbers, social security

numbers, and wage histories. Any such information will be exchanged between the parties via a secure transfer mechanism approved by WHO and DEW.

8. Exchange of such information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
9. Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. Confidential information includes: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in WHD's enforcement files that were obtained under these conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information on living persons; individually identifiable health information; and confidential business information and trade secrets.
10. Confidential UC information, as defined in 20 CFR 603.2(b), means any unemployment compensation information, as defined in 20 CFR 603.2(j), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
11. When confidential information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this MOU as described herein. The information shall not be duplicated or redisclosed without the express written permission of the agency providing the information (hereinafter the "donor agency"), a court order or as required by law, including the Freedom of Information Act. Upon receipt of a public disclosure request, DEW agrees to provide WHO with notice of the request and an opportunity to pursue legal action to prevent the release of information. Upon receipt by WHO of a public disclosure request, WHO agrees to provide DEW with notice of the request and an opportunity to pursue legal action to prevent the release of information.
12. Both WHO and the individual recipient of any confidential UC information are subject to several required safeguards.

WHO agrees to:

- (a) Instruct all personnel having access to the disclosed information about confidentiality requirements, the requirements of this MOU, and the sanctions specified by South Carolina law for unauthorized disclosure of confidential information;
- (b) Acknowledge by this MOU's execution that all personnel having access to the disclosed information have been instructed in accordance with this MOU and will adhere to DEW's confidentiality requirements and procedures by completing DEW's Confidentiality Agreement, attached hereto (See Attachment A);
- (c) Dispose of information disclosed or obtained, and any copies thereof made by the recipient agency, entity, or contractor, after the purpose for which the information is disclosed is served, except for disclosed information possessed by any court or otherwise provided by law; and

(d) Maintain a system sufficient to allow an audit of compliance with the requirements of this MOU.

The individual recipient of any confidential UC information is required to:

- (a) Use the disclosed information only for purposes authorized by law and consistent with this MOU;
- (b) Store the disclosed information in a place physically secure from access by unauthorized persons;
- (c) Undertake precautions to ensure that only authorized personnel have access to disclosed information in hardcopy form;
- (d) Store and process disclosed information maintained in electronic format in such a way that unauthorized persons cannot obtain the information by any means; and
- (e) Undertake precautions to ensure that only authorized personnel are given access to disclosed information stored in computer systems.

13. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
14. Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
15. The agencies will notify one another, through the agency contact person identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOU.
16. In addition to the requirements above, confidential UC information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4 and any applicable state laws.
17. In the event that there is a public proceeding, such as a trial, in which confidential information may be used or testimony of WHD's employees sought, WHO requires that DEW notify WHO. In the event that there is a public proceeding, such as a trial, in which confidential information may be used or testimony of the DEW's employees sought, DEW requires that WHO notify DEW.
18. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next

business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use. Use includes the time-period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.

19. For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
20. However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within three (3) days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU may have been inadvertently disclosed.
21. The agencies will notify one another, through the agency contact person identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOU.

Subject to the foregoing constraints:

22. The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
23. The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
24. The agencies will exchange information {statistical data} on the incidence of violations in specific industries and geographic areas, if possible.
25. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

Dissemination of Factual Information

26. The agencies agree to jointly disseminate outreach materials to the regulated community when appropriate. Any such dissemination may not be undertaken without prior notice of each party.
27. All public materials bearing the United States Department of Labor {"USDOL"} or WHO name, logo, or seal must be approved in advance by WHO. All public materials bearing the DEW name, logo, or seal must be approved in advance by DEW. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the MOU shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner.

Costs for Furnishing Information

- Pursuant to 20 C.F.R. § 603.5, WHO will not pay for the costs of DEW furnishing information as WHO is performing a service for DEW. Moreover, DEW will not pay for the costs of WHD furnishing information as DEW is performing a service for WHO.

Resolution of Disagreements

- Disputes arising under this MOU will be resolved informally by discussions between designated contact persons or other officials designated by each agency.

Period of Memorandum of Understanding

- This MOU becomes effective upon the signing of both parties, and will expire three (3) years from the effective date.

Breach, Enforcement, Termination, and Modification

Breach: If any employee or agent thereof, fails to comply with any provision of this MOU, the MOU must be suspended, and **further disclosure of information (including any disclosure being processed) is prohibited**, until DEW is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, the MOU must be canceled, and WHD must be required to surrender to DEW all confidential UC information (and copies thereof) obtained under this MOU and any other relevant information, or provide a certificate of destruction.

Both parties agree that each party shall be liable for its own acts and omissions, and the acts and omissions of its employees, agents, and officers, and nothing within this MOU shall impute or transfer liability to the other party. This provision shall survive the expiration or termination of this MOU, regardless of the reason for termination.

Enforcement: Pursuant to federal and state law, DEW must hold confidential and must not publish information that reveals an individual's or employing unit's identity and/or any identifying particulars. S.C. Code Ann. § 41-29-160 and 20 C.F.R. Part 603. In the event an employee or member of DEW violates a state provision, the person may be fined not less than \$20.00 or more than \$500.00 and/or imprisoned for not longer than 90 days. S.C. Code Ann. § 41-29-150. DEW is permitted to disclose information under limited circumstances, including an agency or entity to which disclosures are permitted by federal statute or regulation. S.C. Code Ann. § 41-29-170(B)(1)(c). When disclosure is permitted, the person or organization shall use the information or records solely for the purposes for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as DEW employees, including the penalties described in this section. S.C. Code Ann. § 41-29-170(B)(1)(d) (private or public person/organization needed to assist in operation of department).

DEW is permitted to disclose this information with conditions as outlined by federal regulation to WHO, as described in this MOU. The confidentiality requirements and penalties that apply to DEW staff extend, to the extent permitted by law, to WHD's employees covered under this MOU.

Termination and Modification: This MOU may be terminated by either party upon thirty (30) days' written notice. Should either party terminate this MOU, WHD's employees shall no longer have access to confidential UC information and will be required, at DEW's discretion, to return the information to DEW's Office of General Counsel or a certificate of destruction at the time of the regularly scheduled destruction, at DEW's request.

In the event there is a change in federal and or state law that nullifies any portion of this MOU, the MOU is immediately terminated and a new MOU under the current law may be executed.

In addition, this MOU is terminable by DEW if it determines that the safeguards in the MOU are not adhered to by WHO.

No amendments, modifications, changes, additions or deletions of the MOU shall be valid unless in writing, signed by both parties, and attached to this MOU.

This Memorandum of Understanding is effective as of the 4th day of November, 2019.

United States Department of Labor
Wage and Hour Division

State of South Carolina
South Carolina Department of
Employment and Workforce

By: _____
Jamie Benefiel
District Director
Columbia, SC District Office

By: _____
Paul Famolari
Deputy General Counsel