

COMMON INTEREST AGREEMENT
BETWEEN
PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT LABOR
AND
THE VERMONT DEPARTMENT OF LABOR

This Agreement is made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division and the Employee Benefits Security Administration (each represented by the Office of the Solicitor and hereinafter collectively referred to as "USDOL"), and the Vermont Department of Labor (hereinafter referred to as "VDOL"), together collectively referred to as "the agencies" or "the parties."

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated investigations and sharing information consistent with applicable law, the parties agree to enter into this Common Interest Agreement (hereinafter the "Agreement").

THEREFORE, IT IS MUTUALLY AGREED THAT:

This Agreement is intended to memorialize this understanding between USDOL and VDOL. This Agreement is a voluntary agreement that expresses the good-faith intentions of the agencies; it is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This Agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This Agreement outlines procedures to be followed by the agencies in working together for the purposes described in this Agreement.

Purpose

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of Vermont. The agencies are entering into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest, including sharing training materials, providing employers and employees with compliance assistance information, conducting coordinated investigations, and sharing information as appropriate to advance the common legal goals of the parties, *i.e.*, protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers' compensation entitlements, safety, and health of America's workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

Agency Responsibilities

The USDOL 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, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, and the Employee Retirement Income Security Act. Nothing in this Agreement limits the USDOL's enforcement of these and other statutes.

VDOL is responsible for administering and enforcing Vermont's Unemployment Compensation Law, Workers' Compensation Law, Wage and Hour Law, the Vermont Occupational and Safety and Health Act, and the Vermont Workforce Development Division.

- Each agency will designate a contact person responsible for coordinating the activities pursuant to this Agreement. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
- The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the Agreement.

Points of Contact (POCs)

The agencies designate the following POCs responsible for coordinating the partnership activities and meeting annually to review terms and conditions and areas of mutual concern. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.

POC designees:

Brian Cleasby (WHD)
Community Outreach and Resource Planning Specialist
Cleasby.Brian@dol.gov
603-606-3116

Mary Rosen (EBSA)
Deputy Regional Director
617-565-9614
rosen.mary@dol.gov

Dirk Anderson (VTDOL)
General Counsel
802-828-4391
dirk.anderson@vermont.gov

Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may conduct joint investigations periodically in the State of Vermont, if opportunity provides.
- The agencies may coordinate their respective enforcement activities and assist each other with enforcement.
- The agencies may make referrals of potential violations of each other's statutes.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates the parties to expend appropriations or enter into any contract or other obligation.
- By entering into this Agreement, the agencies do not imply an endorsement or promotion by any agency of the policies, programs, or services of the others.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any other agency to implement its respective statutory functions.
- This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or be binding upon the parties. This Agreement is not intended to confer any right upon any private person or other third party.
- Nothing in this Agreement will be interpreted as limiting, superseding, or otherwise affecting each party's normal operations. This Agreement also does not limit or restrict the parties from participating in similar activities or arrangement with other entities.
- This Agreement 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 V.S.A. § 1314.

Exchange of Information

- To the extent permitted by law, the parties understand that in order to effectuate the purposes and provisions of this Agreement, it may be necessary, from time to time,

to exchange information, some of which may be considered confidential. It is the policy of each of the parties 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 its own statutory obligations and enforcement efforts. It is the view of the parties that an exchange of information in which both entities are proceeding with a common legal interest is to their mutual benefit. The parties to this Agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.

- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state and federal statutes or law. Confidential information includes: the identity of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state employees, including (but not limited to) any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney-work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.
- When confidential information is exchanged it will not be released to the public, or to any third party, without the express permission of the agency providing that information, except as required by law including, but not limited to, the Freedom of Information Act or Vermont's Public Records Act. Upon receipt of a public disclosure request, VDOL agrees to provide USDOL with notice of the request and an opportunity to pursue legal action to prevent the release of information.
- Confidential Unemployment Compensation ("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 or under 21 V.S.A. § 1314.
- When confidential information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or re-disclosed without the written authority of the agency providing the information (hereinafter the "donor agency"), a court order, or as required by law, including the Freedom of Information Act.
- In addition to the requirements above, Confidential Unemployment Compensation

information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4 and any applicable state laws, including 21 V.S.A. § 1314.

- In the event that there is a public proceeding, such as a trial, in which confidential information may be used, the USDOL requires that VDOL notify it of such circumstance. If testimony of any USDOL participating agency's employee is sought, VDOL will pursue the testimony in accordance with USDOL procedures at 29 C.F.R. Part 2 Subpart C-Employees Served with Subpoenas.
- For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this Agreement 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 and may be transmitted via secure FTP. Use includes the time period required for compliance with federal and state records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.
- 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.
- 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 Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within three days 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 Agreement may have been inadvertently disclosed.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this agreement, 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.

- No party shall have authority to waive any applicable privilege or doctrine on behalf of any 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.
- The agencies will notify one another, through the agency POC identified in this agreement, 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 agreement.

Subject to the foregoing constraints:

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

Resolution of Disagreements

Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

Previous Agreements

This Agreement replaces and supersedes any previous Agreement between the parties.

Period of Agreement

This Agreement becomes effective upon the signing of all parties and will expire five years from the effective date. This Agreement may be modified in writing by mutual consent of all agencies. The Agreement may be cancelled by either party by giving 30 days advance written notice prior to the date of cancellation. Renewal of the Agreement may be accomplished by written Agreement of the parties.

The agreement is effective as of the 10th day of May, 2022.

**United States Department of Labor
Wage and Hour Division**

By: _____

Jessica Looman
Deputy Administrator

By: _____

Mark Watson
Regional Administrator

Vermont Department of Labor

By: _____

Michael A. Harrington
Commissioner of Labor

**United States Department of Labor
Employee Benefits Security
Administration**

By:

Timothy Hauser
Deputy Assistant Secretary for
Program Operations

By: _____

Carol S. Hamilton
Regional Director

**United States Department of Labor
Office of the Solicitor**

By: _____

Seema Nanda
Solicitor

By: _____

Maia S. Fisher
Regional Solicitor