

MEMORANDUM OF UNDERSTANDING BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND
THE NATIONAL DISABILITY RIGHTS NETWORK

The United States Department of Labor (the Department), Wage and Hour Division (hereinafter referred to as "WHD") and the National Disability Rights Network (hereinafter referred to as "NDRN"), together collectively referred to as "the parties," recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the disability community.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (MOU) agreement is intended to memorialize this understanding between WHD and NDRN. This MOU is a voluntary agreement that expresses the good-faith intentions of WHD and NDRN; it is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This MOU agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. The parties to this MOU recognize the value of establishing a collaborative relationship to promote compliance with laws intended to protect the rights of workers with disabilities in the United States. The parties are entering this agreement to effectively and efficiently communicate and share information relevant to each party's respective areas of investigative and enforcement authority.

Parties Responsibilities

WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act (FLSA), 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. Section 14(c) of the FLSA permits employers that obtain certificate authority from the Department to pay certain employees with disabilities at subminimum wage rates, wages below the generally applicable minimum wage, that are commensurate with their productivity.

WHD issues such certificates and can bring enforcement actions against employers that fail to comply with section 14(c) or other FLSA requirements. WHD also enforces section 511 of the Rehabilitation Act, which places certain limitations on the payment of a subminimum wage under section 14(c) of the FLSA. WHD's policy is to carry out a vigorous, consistent, and effective enforcement program with respect to employment of workers with disabilities under section 14(c) to ensure that these workers are made aware of their rights under the various Acts enforced by WHD and are able to exercise them. Nothing in this agreement

limits the WHD's enforcement of any statute.

NDRN is the membership organization, and the training and technical assistance provider, for the congressionally mandated and federally funded Protection and Advocacy (hereinafter referred to as "P&A") and Client Assistance Program (hereinafter referred to as "CAP") system. A P&A and CAP agency exists in every U.S. state, the District of Columbia, the five U.S. territories, and for Native Americans residing in the four corners region. Among other responsibilities, P&A agencies protect the rights of individuals with disabilities by conducting monitoring of locations at which such individuals receive any services, supports, or other assistance, including workplaces where employers are paying less than minimum wage under section 14(c) of the FLSA. P&A agencies also investigate incidents of abuse or neglect of such individuals; and pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of such individuals.

I. Purpose

With the specific and mutual goals of more effectively protecting the rights of workers with disabilities pursuant to their respective authorities by sharing relevant information as described, the parties agree to enter into this agreement.

II. Contacts

- The parties have designated the following contact persons responsible for coordinating activities under this agreement:

WHD Designated Contact Person:
Helen M. Applewhaite
Director, Division of FMLA and Section 14(c)
200 Constitution Ave, NW, Room S-3502
Washington, DC 20210
202-693-0640
Applewhaite.helen@dol.gov

NDRN Designated Contact Person:
Cheryl Bates-Harris
Senior Disability Advocacy Specialist
820 First Street, NE, Suite 740
Washington, DC 20002
202-408-9514 x 117
Cheryl.bates-harris@ndrn.org

- Either party will notify the other party if the separation or long-term absence of its designated contact person arises.
- Representatives of the parties will meet regularly to review areas of mutual concern and the terms and conditions of this agreement.

III. Exchange of Information

- The parties will exchange investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy. NDRN will provide to WHD information relevant to WHD's enforcement of section 14(c) of the FLSA and section 511 of the Rehabilitation Act obtained as part of P&A monitoring of any employers of individuals with disabilities, including employers that hold or once held section 14(c) certificates. WHD will assist NDRN in determining what information P&As could collect and share that would be of use to WHD. NDRN and WHD will explore additional methods for referrals to a P&A when a WHD investigation uncovers possible abuse or neglect of one or more individuals with disabilities, or a potential need for one or more individuals with disabilities to receive P&A or related services.
- The parties agree to exchange information about laws and regulations of common concern to the parties, to the extent practicable. WHD and NDRN will also consult concerning issues of mutual interest, including but not limited to training for WHD's Regional Enforcement Coordinators on the P&A and CAP system and issues around the employment of individuals with disabilities, as well as how the payment of back wages can affect the government benefits (e.g. Supplemental Security Income) to which some workers paid pursuant to WHD investigation findings are entitled.
- WHD recognizes that P&As have statutory authority to act in the interest of individuals with disabilities. WHD will therefore accept complaints filed by P&As regarding alleged violations of statutes WHD enforces either when an individual has designated a P&A as the individual's representative, or when the P&A files a complaint as a third party. In such circumstances, WHD will treat the individual and/or the P&A as complainants for all relevant purposes (except where WHD receives notice that the individual does not wish the P&A to pursue a complaint on their behalf), including by providing to the P&A the same information about an investigation that the individual complainant receives. In cases where a complaint filed by a P&A related to a section 14(c) issue cannot be investigated immediately, WHD will keep the P&A informed of the status of these complaints.
- WHD will provide NDRN with public information concerning the results of closed investigations of employers' compliance in section 14(c) cases regardless of whether a P&A was a complainant in those cases.
- WHD will continue to publish a list of employers currently holding section 14(c) certificates on its website and regularly update that list. In addition, WHD will provide publicly-available information upon the request of NDRN concerning the status of certificate holders when it is practical to do so.

IV. Previous Agreements

This agreement replaces and supersedes any previous Partnership Agreement MOU between the parties.

V. 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 parties do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.
- Nothing in this agreement is intended to diminish or otherwise affect the authority of WHD or any P&A or CAP to implement its 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 the parties' normal operations. This agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- Nothing in this agreement conveys any of WHD's investigative or enforcement authority to NDRN to conduct any portion of a WHD compliance action. WHD continues to have sole enforcement authority under section 14(c) of the FLSA and this agreement does not convey any authority of NDRN (or related organizations) to WHD.
- 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 or state laws.

VI. Resolution of Disagreements

Disputes arising under this agreement will be resolved informally by discussions between the parties' points of contact or other officials designated by each party.

VII. Period of Agreement

- This agreement becomes effective upon being signed by both parties and will expire five (5) years from the effective date.
- This agreement may be modified in writing by mutual agreement of the parties.

- Either party may cancel the agreement by giving thirty (30) days advance written notice prior to the date of cancellation.
- Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the 13 day of December, 2021.

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

NATIONAL DISABILITY RIGHTS NETWORK

By: Jessica Looman
Jessica Looman
Wage and Hour Division
Acting Administrator

By: Curt Decker
Curt Decker
NDRN Executive Director

Date: December 13, 2021

Date: December 10, 2021