

PARTNERSHIP AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND
THE KENTUCKY LABOR CABINET

This Agreement is made and entered into by and between The United States Department of Labor's Wage and Hour Division (hereinafter referred to as "WHD" or "Department") and the Kentucky Labor Cabinet (hereinafter referred to as "KLC"), 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 conducting coordinated investigations and sharing information consistent with applicable law, the parties agree to enter into this partnership.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The agencies recognize the value of establishing a collaborative relationship to promote compliance with state and federal laws addressing areas of common concern associated with alleged violations. The agencies are particularly concerned about employees that are misclassified as independent contractors among the regulated community in the Commonwealth of Kentucky and nationally. The rise of independent contractors is a significant trend in the American workforce—contributing directly to low pay, irregular hours and insecurity. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, to protect the right of America's workforce to be employed in a manner that is compliant with laws and regulations governing employment status, payment of wages, hours of work, safety and health, and unemployment insurance, and to conduct coordinated investigations and share information as appropriate.

Agency Responsibilities

WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act, the Family 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. DOL enters into this MOU under the authority provided by 29 U.S.C. § 211(b), which authorizes DOL to cooperate with

State agencies charged with the administration of State labor laws. Nothing in this agreement limits the WHD's enforcement of these and other statutes.

KLC is responsible for the administration and enforcement of a wide range of labor laws including minimum wage, overtime, wage payment, child labor, prevailing wage, workers' compensation and occupational safety and health. Nothing in this agreement limits the KLC's enforcement of these and other statutes it administers.

Contacts

- The agencies will designate a contact person or persons responsible for coordinating the partnership activities. The contact person will be responsible for coordinating the partnership activities. Information regarding the contact person, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the agreement and at the time that the identity of the contact person changes.
- The parties will also designate a representative to meet each quarter either in person, by teleconference, or other electronic means with their counterpart in the other agency to review areas of common legal interest and the terms and conditions of the partnership. Information regarding the representative, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the agreement and at the time that the identity of the representative changes.

Enforcement and Data Sharing

Where appropriate and to the extent allowable under law, the agencies may:

- conduct coordinated investigations periodically in the Commonwealth of Kentucky, if opportunity provides.
- coordinate their respective enforcement activities and assist each other with enforcement, as appropriate.
- make referrals of potential violations to each other's statutes, as appropriate.
- provide information regarding settlements or other dispositions of cases to the other party in a mutually agreed upon format so that appropriate follow-up may take place.
- cooperate to the extent possible in providing testimony to support exchanged information which becomes the subject of administrative or civil proceedings consistent with the Exchange of Information Section of this Agreement.
- notify each other of any requests for information affecting shared data under the Freedom of Information and Kentucky Open Record laws so that the parties may affect shared data consistent with Exchange of Information Section of this Agreement.

Effect of Agreement

- This agreement does not authorize the expenditure or reimbursement of any funds. Nothing in the agreement obligates the parties to expend appropriations or enter into any contract of other obligation. Nothing contained in this agreement shall constitute a debt owed by the Commonwealth of Kentucky.
- By entering into this partnership, the agencies 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 either 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 also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations.
- The 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 Kentucky state laws.

Exchange of Information

- It is the policy of WHD 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 the WHD's own statutory obligations and enforcement efforts. It is WHD's view that an exchange of information in cases in which both entities are proceeding on basically the same matter is to our mutual benefit. There is a need for WHD to provide information to other law enforcement bodies without making a public disclosure.
- Exchange of information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- 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 consent or authority of the other party.
- 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, but is not necessarily limited to: 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.

- 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.
- 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 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 Agreement may have been inadvertently disclosed.
- In the event that there is a public proceeding, such as a hearing or trial, in which confidential information may be used or testimony sought, the party with knowledge will notify the other party, and obtain the written consent or authority of the other party.

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.

Outreach and Education

When appropriate and feasible, the agencies may:

- coordinate, conduct joint outreach presentation, and prepare and distribute publications of common concern for the regulated community.
- jointly disseminate outreach materials to the regulated community when appropriate.

All materials bearing the United States Department of Labor ("DOL") or WHD name, logo or seal must be approved in advance by DOL. All materials bearing the Kentucky Labor Cabinet ("KLC") name, logo, or seal must be approved in advance by KLC.

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.

Period of Agreement

- This Agreement becomes effective upon the signing of both parties, and will expire three (3) years from the effective date. This agreement may be modified in writing by mutual consent of both agencies. The agreement may be cancelled by either party 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 15 day of July, 2015.

United States Department of Labor
Wage and Hour Division

By: David Weil
David Weil,
Wage and Hour Administrator

By: Wayne Kotowski
Wayne Kotowski
Southeast Regional Administrator

Kentucky Labor Cabinet

By: Larry Roberts
Larry Roberts
Secretary
Kentucky Labor Cabinet