

COMMON INTEREST AGREEMENT

BETWEEN

PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR

AND

THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND
WORKFORCE DEVELOPMENT, JOINT ENFORCEMENT TASK FORCE ON THE
UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION/COUNCIL ON
THE UNDERGROUND ECONOMY

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, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the "Department"), and the Commonwealth of Massachusetts, Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)¹ through the Secretary of the Executive Office of Labor and Workforce Development (EOLWD). The Department and the Commonwealth are collectively referred to as "the parties."

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

¹ In accordance with Chapter 144 of the Acts of 2014 *An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms* (M.G.L. Chapter 23 Section 25) on March 25th 2015, the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification will become the Council on the Underground Economy (CUE). The council, chaired by the Secretary of the Executive Office of Labor and Workforce Development and consisting of 17 members, shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term "underground economy" shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages. See Appendix B. This agreement extends to the CUE and its named member agencies.

THEREFORE, IT IS MUTUALLY AGREED

THAT: Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to 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 Department is responsible for administering and enforcing a wide range of federal 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, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department's enforcement of these and other laws.

The Commonwealth is responsible for:

Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- The Task Force consists of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General's Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Division of Unemployment Assistance.
- According to E.O. 499, JTF coordinates joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster

compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.

- According to E.O. 499, in fulfilling its mission, JTF:
 - Facilitates timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
 - Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
 - Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
 - Encourages businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
 - Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate;
Works cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
 - Works cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
 - Identifies potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
 - Consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness,

including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Contacts

- Each party will designate a primary contact person, and each agency will also designate a contact person, responsible for coordinating activities covered under this Agreement.
- Each party will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the parties and/or their participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The parties and their participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The parties and their participating agencies will make referrals of potential violations of each other's laws.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating 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 or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies from participating in similar activities or arrangements with other entities.

- This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal laws and laws of the Commonwealth.

Exchange of Information

- The Department and the Commonwealth endeavor to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information — including certain documents, factual materials, mental impressions, memoranda, interview reports, research and other information, some of which may be privileged — in cases of common legal interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal law, or otherwise may properly be withheld from disclosure. Such information may include but is not 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 any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; 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/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- 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.
- Acknowledging that privileges and protections (including without limitation the investigative files privilege, informant's privilege, attorney-client privilege, work product doctrine, deliberative process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this

Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Court order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.

- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to noncriminal justice agencies.
- 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, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- 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.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement or other means of disposition.
- 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 other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.
 - 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.

Subject to the foregoing constraints:

- The parties and their participating agencies agree to exchange information on laws and regulations of common concern to the one another, as requested and to the extent practicable and allowable by law and policy.
- The parties and their participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.
- The parties and their participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

Resolution of Disagreements

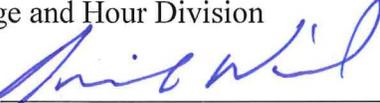
- Disputes arising under this Agreement will be resolved informally by discussions between parties' Points of Contact, or other officials designated by a party.

Period of Agreement

- This Agreement becomes effective upon the signing by all signatories below, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all signatories or their designees. Any party or participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all signatories or their designees.

This Agreement is effective as of the 17th day of November, 2014.

United States Department of Labor,
Wage and Hour Division

By: 
Dr. David Weil
Administrator

Commonwealth of Massachusetts,
Joint Enforcement Task Force on the
Underground Economy and Employee
Misclassification/Council on the Underground
Economy

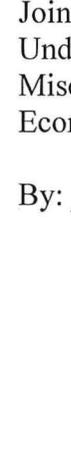
By: _____
Rachel Kaprielian
Secretary, Executive Office of Labor and
Workforce Development Chair, Joint Task
Force/Council

By: 
Mark Watson
Regional Administrator, WHD

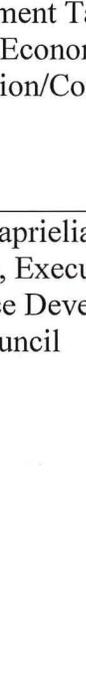
United States Department of Labor
Occupational Safety and Health Administration

By: 
Dr. David Michaels
Assistant Secretary

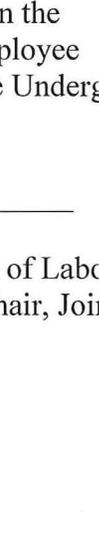
United States Department of Labor
Employee Benefits Security Administration

By: 
Phyllis C. Borzi
Assistant Secretary

United States Department of Labor
Office of Federal Contract Compliance
Programs

By: 
Patrick Patterson *PATRICIA A. SHIV*
Deputy Director

United States Department of Labor
Office of the Solicitor

By: 
M. Patricia Smith
Solicitor of Labor

This Agreement is effective as of the _____ day of _____, 2014.

United States Department of Labor,
Wage and Hour Division

By: _____
Dr. David Weil
Administrator

By: _____
Mark Watson
Regional Administrator ,WHD

United States Department of Labor
Occupational Safety and Health Administration

By: _____
Dr. David Michaels
Assistant Secretary

United States Department of Labor
Employee Benefits Security Administration

By: _____
Phyllis C. Borzi
Assistant Secretary

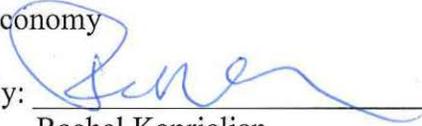
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By: _____
Patrick Patterson
Deputy Director

United States Department of Labor
Office of the Solicitor

By: _____
M. Patricia Smith
Solicitor of Labor

Commonwealth of Massachusetts,
Joint Enforcement Task Force on the
Underground Economy and Employee
Misclassification/Council on the Underground
Economy

By: 
Rachel Kaprielian
Secretary, Executive Office of Labor and
Workforce Development Chair, Joint Task
Force/Council

United States Department of Labor
Office of the Solicitor

By: 

Michael D. Felsen
Regional Solicitor

Appendix A

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
 - Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
 - Confidential tax information in all files or systems must be maintained only for as long as it is relevant or useful for the purposes of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 931; and the Massachusetts Statewide Records Retention Schedule must be followed.
 - Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
 - Access to confidential information may not be released to any third party without DOR's written approval.
 - DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
 - DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.
- In accordance with M.G.L. c.151:
 - Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.

- Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
- Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
- Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.
- In accordance with M.G.L. c.93H, agencies shall safeguard personal information of residents of the Commonwealth.

Appendix B

Chapter 144 of the Acts of 2014
AN ACT RESTORING THE MINIMUM WAGE AND PROVIDING
UNEMPLOYMENT INSURANCE REFORMS
Section creating the Council on the Underground Economy

SECTION 23. Said [chapter 23](#) is hereby further amended by adding the following section:-

Section 25. (a) There is hereby established a council on the underground economy. The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term "underground economy" shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general's fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

(1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;

(2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;

(3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;

(4) encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints and enhancing the available mechanisms by which workers can report suspected violations;

(5) solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the insurance fraud bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;

(6) work cooperatively with employers, labor and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions

between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;

(7) work cooperatively with federal, state and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including, but not limited, to immigrant workers;

(8) identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and

(9) consult with representatives of business and organized labor, members of the general court, community groups and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.

(d) The council shall file an annual report with the governor and the clerks of the house of representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation: (1) describe the council's efforts and accomplishments during the year; (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action; (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the webpage of the executive office of labor and workforce development.

Disclosure of tax information by the Department of Revenue:

SECTION 24. [Section 21 of chapter 62C of the General Laws](#), as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 158 to 160, inclusive, the words "Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, established by Executive Order 499," and inserting in place thereof the following words:- council on the underground economy established by section 25 of [chapter 23](#).

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter144>