

MEMORANDUM OF AGREEMENT

BETWEEN

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

AND

NC DEPARTMENT OF COMMERCE-DIVISION OF WORKFORCE SOLUTIONS

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD” or “Department”), and the North Carolina Department of Commerce-Division of Workforce Solutions (hereinafter referred to as DWS) (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the regulated community in the state of North Carolina.

The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including cross training staff, providing employers and employees with compliance assistance information towards the goal of protecting the wages, safety, and health of America’s workforce and sharing information as appropriate.

THEREFORE, IT IS MUTUALLY AGREED THAT:

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of North Carolina. The agencies are forming this partnership 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, and sharing information as appropriate.

This memorandum of agreement (MOA) is intended to memorialize this understanding between DOL/WHD and DWS. This MOA is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and DWS; it is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This MOA does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This MOA outlines procedures to be followed by both DOL/WHD and DWS in working together to address the need for compliance under MSPA and H-2A among agricultural employers, Farm Labor Contractors (FLC) and H-2A Labor Contractors (H-2ALC).

Agency Responsibilities

DOL/WHD enforces the Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. DOL/WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, DOL/WHD administers and enforces the prevailing

wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.

In addition to responsibilities for a number of federal employment and training programs DWS is responsible for administering services of the Wagner-Peyser Act Employment Service System and the State public labor exchange activities. The Agricultural Services Unit oversees the principal regulations of the Wagner-Peyser Act Employment Service (Part 651, 653, 658) concerning the provisions of services for Migrant and Seasonal Farmworkers, the Foreign Labor H2A & H2B programs, and the Agricultural Outreach Program.

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, on child labor, agricultural employment, FLC and H-2ALC registration, safe housing and transportation, and enhancing enforcement by sharing information, the parties agree to enter into this agreement.

The parties agree as follows:

I. Purpose

The purpose of the MOA is to maximize and improve the enforcement of the laws administered by DOL/WHd and by DWS. This agreement will also encourage enhanced law enforcement and greater coordination between the agencies through coordinated sharing of information, training and outreach.

II. Provisions

The parties to this MOA agree as follows:

A. Outreach and Education

- The agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications, when appropriate, for the regulated community of common concern. Specifically, the agencies will focus on coordinating outreach around the regulations governing, agricultural employers, FLCs and H-2ALCs.
- The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
- All materials bearing the DOL or DOL/WHd name, logo, or seal must be approved in advance by DOL/WHd.
- All materials bearing the DWS name, logo, or seal must be approved in advance by DWS.

B. Points of Contacts (POCs)

- The agencies will designate a POC responsible for coordinating the partnership activities. 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 partnership.
- POC designees:

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Francisca Rios, Agricultural Services Program Manager
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C. Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law. These actions include the sharing of investigative information by DWS or DOL/WHD including

employers found in repeat violation in order to support the discontinuation of services in North Carolina elicited by DWS.

- The agencies will make referrals of potential violations of each others statutes, where appropriate. Outcome of referrals including citations of employers and pending actions will also be shared.

D. Information

- The agencies agree to exchange information on laws and regulations of common concern 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 or policy.
- The agencies will exchange information (anecdotal and statistical data) on incidence of violations in specific industries and geographic areas, if possible.

E. Training

- The agencies agree to cross train investigators and other staff no less than once every two years, subject to agency resources. Joint training will be conducted to educate staff members of both agencies about the laws and regulations enforced by both, and to discuss issues of common concern.
- The agencies will exchange information related to policy or regulatory changes to State or Federal laws, to the extent permissible.

III. Effect of MOA

- This MOA 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 obligations.
- By entering into this agreement, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.
- Nothing in this MOA is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This MOA is not intended to be legally binding and does not confer any rights on any private person.
- This MOA is an internal government agreement and is not intended to confer any rights against the United States, the State of North Carolina, their agencies, or their officers upon any private person.

- Nothing in this MOA will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOA also does not limit or restrict the parties from participating in similar activities or arrangements 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 laws and state laws.
- This MOA contains all the terms and conditions agreed upon by the agencies concerning the subject matter of the agreement. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the agencies. This agreement is not intended to confer any right upon any private person or other third party.

IV. Exchange of Information

To the extent permitted by law, the agencies understand that in order to effectuate the purposes and provisions of this MOA, it will 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 agencies are proceeding with a common legal interest is to their mutual benefit. The agencies to this MOA recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or make a public disclosure.

It is the policy of DOL/WHM and DWS 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 DOL/WHM's and DWS's own statutory obligations and enforcement efforts. It is DOL/WHM's and DWS'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 DOL/WHM and DWS to provide information to other law enforcement bodies without making a public disclosure.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:

1. The agencies agree to exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
2. The parties will be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
3. Exchange of information to one another pursuant to this MOA is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C.552.

4. 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 Public Records Act, Chapter 239.001 NRS. Upon receipt of a public disclosure request, DWS agrees to provide DOL/WHHD with notice of the request and an opportunity to pursue legal action to prevent the release of information.
5. 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 express written consent or 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.
6. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal and state laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; employer/employee records, 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) investigators and supervisors; 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.
7. 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.
8. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of DOL/WHHD's employees sought, DOL/WHHD requires that DWS notify DOL/WHHD.
9. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of DWS employees sought, DWS requires that DOL/WHHD notify DWS.
10. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOA, 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.

11. 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.
12. The agencies will notify one another, through the agency POC identified in this MOA, 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.
13. 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.
14. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOA remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated POC 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 not be electronically mailed, unless secured passwords are used.
15. 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.
16. 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 MOA, the agency experiencing the incident or disaster will send formal written electronic notification to the donor agency's designated contact person immediately within 3 days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOA may have been inadvertently disclosed.

Subject to the foregoing constraints:

17. The agencies agree to exchange information on laws and regulations of common concern to the extent practicable.
18. The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
19. The agencies will exchange information (anecdotal and statistical data) on the incidence of violations in specific industries and geographic areas, if possible.

20. Liability of the U.S. Government is governed by the Federal Torts Claims Act and liability of the State of North Carolina is governed by the State Tort Claims Act.

VI. Dissemination of Factual Information

- 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.
- All public materials bearing the United States Department of Labor ("USDOL") or DOL/WHH name, logo, or seal must be approved in advance by USDOL. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the Agreement 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.

VII. 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.

VIII. Period of Agreement

- This MOU agreement becomes effective upon the signing of both parties, and will expire 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 termination. Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the 2nd day of August, 2018.

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

**NC Department of Commerce
Division of Workforce Solutions**

By: Richard E. Blaylock 8/02/2018
Richard E. Blaylock Date
District Director
USDOL- Wage and Hour Division

By: Daniel L. Giddens 7/27/18
Daniel L. Giddens Date
Assistant Secretary
NC Department of Commerce