

MEMORANDUM OF COOPERATION BETWEEN
THE U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
AND
THE NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

This Agreement is made and entered into by and between the United States Department of Labor's Wage and Hour Division (DOL/WHd), and the New Jersey Department of Labor and Workforce Development (NJDLWD), 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 laws of common concern in the State of New Jersey. The Agencies are forming this partnership to more effectively and efficiently communicate and cooperate in areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, to conduct coordinated investigations and share information, as appropriate.

This agreement is intended to memorialize this understanding between DOL/WHd, and NJDLWD. This agreement is a voluntary agreement that expresses the good-faith intentions of DOL/WHd and NJDLWD, is not intended to be legally binding, does not create any contractual obligations, and 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 DOL/WHd, and NJDLWD in working together to address the need for information sharing, coordinated investigations, cross training staff, and outreach between DOL/WHd and NJDLWD.

Agencies

DOL/WHD 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, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this agreement limits the DOL/WHD's enforcement of these and other statutes.

The NJDLWD is an agency of the State of New Jersey, created in accordance with N.J.S.A. 34:1A-1, et seq. The NJDLWD has various divisions and sections that may be relevant here. Among them, are the following:

Division of Wage and Hour Compliance (WHC)

WHC is responsible for enforcement of the New Jersey Wage and Hour Law (N.J.S.A. 34:11-56a, et seq.), the New Jersey Wage Payment Law (N.J.S.A. 34:11-4, et seq.), the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25, et seq.), the New Jersey Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48, et seq.), the State law requiring payment of a prevailing wage for building services (N.J.S.A. 34:11-56.48), the New Jersey Construction Industry Independent Contractor Act (N.J.S.A. 34:34-20-1 et seq.), the State law requiring payment of a prevailing wage and safety training for contractors engaged in construction work on a public utility (N.J.S.A. 34:13B-2.1), the New Jersey Child Labor law (N.J.S.A. 34:2-21.1, et seq.), the New Jersey Industrial Home Work law (N.J.S.A. 34:6-120, et seq.), the State law requiring notification of changes to or termination of employer-sponsored health benefit plans (N.J.S.A. 34:11A-16, et seq.), the State law prohibiting discrimination against unemployed individuals (N.J.S.A. 34:8B-1 et seq.), and the New Jersey Opportunity to Compete Act (N.J.S.A. 34:6B-11 et seq.), among other laws.

Division of Public Safety and Occupational Safety and Health (OSH)

OSH is responsible for enforcement of the New Jersey Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq.), the New Jersey Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.), the New Jersey Licensing of Crane Operators Act (N.J.S.A. 45:26-1 et seq.), the New Jersey Operating Engineers and Firemen Licensing Act (N.J.S.A. 34:7-1 et seq.), the New Jersey Mine Safety Act (N.J.S.A. 34:6-98.1 et seq.), and the New Jersey Explosives Act (N.J.S.A. 21:1A-128 et seq.), among other laws.

Division of Unemployment Insurance (UI)

UI is responsible for administration of the State's unemployment compensation system pursuant to the New Jersey Unemployment Compensation Law (N.J.S.A. 43:21-1 et seq.).

Division of Employer Accounts (EA)

EA is responsible for the collection of contributions to the Unemployment Compensation Fund and State Disability Benefits Fund pursuant to the New Jersey Unemployment Compensation Law (N.J.S.A. 43:21-1 et seq.) and the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.).

Contacts

- The Agencies will designate a contact person 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 routinely to review areas of mutual concern and terms and conditions of the partnership.

Enforcement

Where appropriate and to the extent permitted by law:

1. The Agencies may conduct coordinated investigations in the State of New Jersey.
2. The Agencies may coordinate their respective enforcement activities and assist each other with enforcement.
3. The Agencies may make referrals of potential violations of each other's statutes.

Effect of Agreement

1. 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.
2. 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.
3. Nothing in this Agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory functions.
4. This Agreement contains all of 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 third party.

5. 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.
6. This Agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, New Jersey Public Records Act, and any other applicable federal and New Jersey laws.

Exchange on Information

1. It is the policy of DOL/WHD and NJDLWD 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/WHD's and NJDLWD's statutory obligations and enforcement efforts. It is the view of DOL/WHD and NJDLWD that an exchange of information in cases in which both Agencies are proceeding on similar matters is to the Agencies' mutual benefit. There is a need for DOL/WHD and NJDLWD to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or otherwise making a public disclosure.
2. Exchange of such information pursuant to this Agreement is not a public disclosure under either the Freedom of Information Act, 5 U.S.C. §552, or the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.
3. "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes or law. Confidential information includes: 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 the Agencies' 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.

4. “Confidential Unemployment Compensation Information,” as defined in 20 C.F.R. §603.2(b), means any unemployment compensation information, as defined in 20 C.F.R. §603.2(j), required to be kept confidential under 20 C.F.R. §603.4 or its successor law or regulations.
5. When Confidential Information is exchanged it shall be accessed and used for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or redisclosed without the express written permission of the Agency providing the information (hereinafter the “Donor Agency”), a final court order or as required by law, including the Freedom of Information Act and the New Jersey Open Public Records Act. Upon receipt of a public disclosure request, NJDLWD agrees to provide DOL/WHD with notice of the request and an opportunity to pursue legal action to prevent the release of information.
6. 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.
7. 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 any other party.
8. The agencies will notify one another, through the agency point of contact 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.
9. 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 the applicable New Jersey laws, including, but not limited to, N.J.S.A. 43:21-11(g).

10. In the event that there is a public proceeding, such as a trial in which Confidential Information may be used and/or testimony of DOL/WHD's employees sought, the DOL/WHD requires that NJDLWD, as appropriate, notify DOL/WHD. In the event there is a public proceeding, such as a trial, in which Confidential Information may be used and/or testimony of NJDLWD's employees sought, NJDLWD requires that DOL/WHD, as appropriate, notify NJDLWD.
11. 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.
12. 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.
13. However, in the event that the Agency receiving 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 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:

1. The Agencies agree to exchange information on laws and regulations of common concern to the Agencies, to the extent practicable.
2. The Agencies will establish a methodology for exchanging investigative leads, complaints and referrals of possible violations, to the extent allowable by law and policy.

3. The Agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographical areas, if possible.
4. Liability of the U.S. Government is governed by the Federal Torts Claims Act and Liability of the State of New Jersey is governed by the New Jersey Tort Claims Act.

Outreach and Education

1. When appropriate and feasible, the Agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications of common concern for the regulated community.
2. 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.
3. All public materials bearing the United States Department of Labor (“USDOL”) or DOL/WHM name, logo, or seal must be approved in advance by USDOL. All public material bearing the NJDLWD name, logo, or seal must be approved in advance by the NJDLWD. 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.

Resolution of Disagreements

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

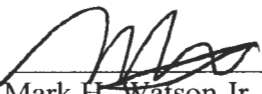
Period of Agreement

This Agreement becomes effective upon the signing by the parties, and will expire three years from the effective date. This Agreement may be modified in writing by mutual consent of the parties. The Agreement may be cancelled by any 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.

Provisions relating to the confidentiality and handling of information exchanged pursuant to this Agreement shall survive the termination of this Agreement.

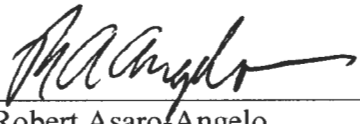
This Agreement is effective this 10th day of August, 2018

United States Department of Labor
DOL/Wage and Hour Division

By: 

Mark H. Watson Jr.
Northeast Regional Administrator

New Jersey Department of Labor and
Workforce Development

By: 

Robert Asaro-Angelo
Commissioner