

PARTNERSHIP AGREEMENT

BETWEEN

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

AND

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “WHD” or “Department”), and New Mexico Department of Workforce Solutions (hereinafter referred to as NMDWS), (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 New Mexico. 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 conducting coordinated investigations and sharing information as appropriate.

WHD is responsible for administering and enforcing 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, 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 Wage and Hour Division’s enforcement of these statutes. Wage and Hour Albuquerque Regional Office has jurisdiction over the State of New Mexico.

The NMDWS is responsible for administering New Mexico unemployment laws and labor laws relating to enforcing the Unemployment Compensation Law, the Minimum Wage Act, Child Labor Act and the Public Works Minimum Wage Act.

Exchange of Information

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

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to

employers, employees, and other stakeholders, on unemployment laws, labor laws, child labor, agricultural employment, and prevailing wage.

Where appropriate and to the extent allowable under law, the parties agree as follows:

- The agencies may exchange information related to State or Federal laws. The agencies may exchange information on incidence of violations in specific industries and geographic areas.
- The agencies may make joint outreach and education presentations and prepare and distribute publications, when appropriate and feasible, to and for the regulated community. All materials bearing the United States Department of Labor (“DOL”) or WHD name, logo or seal must be approved in advance by DOL.
- The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations to the extent practicable.
- The agencies may conduct coordinated investigations, if opportunity provides.
- The agencies may conduct formal cross training of investigators. Joint training may be conducted to educate staff members of both agencies about the laws and regulations enforced by each, and to discuss issues of common concern.

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 obligations.
- 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 is not intended to be legally binding and does not confer any rights on any private person.
- 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 arrangement 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 and state laws.
- Exchange of such information pursuant to this MOU 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 redisclosed without the written authority of the agency providing the information (hereinafter the “donor agency”) or a court order.
- 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. Liability of the U.S. Government is governed by the Federal Torts Claims Act
- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state and federal statutes or law. Confidential information includes: the identity of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; 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) 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 on living persons; individually identifiable health information; and confidential business information and trade secrets.
- 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.

In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of WHD’s employees sought, WHD requires that NMDWS notify WHD.

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 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.

All other terms and conditions remain the same.

This agreement is effective as of the 5th day of January, 2016.

United States Department of Labor Wage and Hour Division

By: 
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Administrator

By: 
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PC

New Mexico Department of Workforce Solutions

By: 
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