

PARTNERSHIP AGREEMENT

BETWEEN

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

AND

Labor Bureau of the New York State Office of Attorney General

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 Labor Bureau of the Office of Attorney General (OAG) of the State of New York (hereinafter referred to as "OAG Labor Bureau"), 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 York. 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 conduct coordinated investigations and share information as appropriate towards the goal of protecting the wages, safety, and health of America's workforce.

Agency Responsibilities

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 WHD's enforcement of these and other statutes. WHD enters into this agreement pursuant to its statutory authority under 29 U.S.C. § 211(b).

As head of the Department of Law, the Office of Attorney General of the State of New York serves as the guardian of the legal rights of the citizens of New York and serves all New Yorkers in numerous matters affecting their daily lives. Among other duties, the OAG Labor Bureau investigates violations of minimum wage, overtime, prevailing wage, and other basic federal and state labor laws throughout the state, and brings civil and criminal prosecutions against employers

who have violated these laws. Nothing in this agreement limits the OAG Labor Bureau's enforcement of these and other statutes.

Contacts

- The agencies will designate a contact person responsible for coordinating the partnership activities.
- The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.

Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may conduct joint (affirmative, as appropriate) investigations periodically involving potential violations occurring within the State of New York, if opportunity provides.
- The agencies will assist each other with enforcement.
- The agencies will make referrals of potential violations of each other's statutes.

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 obligation.
- 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 is not intended to confer any right upon any private person or other third party.
- 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.
- This agreement will be executed in full compliance with the Privacy Act of 1974 and the New York Freedom of Information Law, and any other applicable federal and New York state laws.

Exchange of Information

- It is the policy of WHD and OAG Labor Bureau to cooperate with other government agencies where appropriate, subject to the general limitation that any such cooperation must

be consistent with the statutory obligations and enforcement efforts of the WHD and of the OAG Labor Bureau. It is WHD's and OAG Labor Bureau's view that an exchange of information in cases in which both entities are proceeding on the same, overlapping, or similar matters is to our mutual benefit. There is a need for WHD and OAG Labor Bureau to provide information to other law enforcement bodies without making a public disclosure.

- Exchange of such information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552 and the New York Freedom of Information Law.
- Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. *See, e.g.*, 18 U.S.C. 1905 (Trade Secrets Act) and 5 U.S.C. 552a (Privacy Act of 1974). 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 WHD's and OAG Labor Bureau's enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state personnel, 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.
- When confidential information is exchanged it shall be accessed and used by the recipient party solely for the limited purposes of carrying out specific (affirmative, as appropriate) enforcement activities pursuant to this agreement as described herein, and in no event shall such information be disclosed by the recipient party without the written authority of the agency providing the information (hereinafter the "donor agency") or a court order.
- The parties will notify one another 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 subject to the limitations in the preceding paragraph.
- 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 agencies agree to exchange information on laws and regulations of common concern to the agencies in order to advance their (affirmative, as appropriate) enforcement agenda, consistent with applicable law, to the extent practicable and appropriate.
- Where appropriate, the agencies will exchange investigative leads, complaints, referrals of possible violations, and case-related documents, to the extent allowable by law and policy.
- The agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible, to the extent such statistical information readily exists within the agency's records.

Outreach and Education

- 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.
- The agencies agree to 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 OAG name, logo, or seal must be approved in advance by the OAG.

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 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.

Provisions related to the confidentiality and handling of information exchanged pursuant to this agreement shall survive the termination of this agreement.

This agreement is effective as of the 18th day of November, 2013.

United States Department of Labor
Wage and Hour Division

New York Office of Attorney General
Labor Bureau

By: Laura Fortman
Laura Fortman
Principal Deputy Administrator

By: Terri Gerstein
Terri Gerstein
Labor Bureau Chief