

**MEMORANDUM OF COOPERATION
BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND
THE COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA OFFICE OF THE ATTORNEY GENERAL**

This Agreement is made and entered into by and between the United States Department of Labor's Wage and Hour Division (WHD) (hereinafter "WHD" or "DOL") and the Office of Attorney General of the Commonwealth of Pennsylvania (hereinafter "OAG"), 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 Commonwealth of Pennsylvania. 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 WHD and OAG. This agreement is a voluntary agreement that expresses the good-faith intentions of WHD and OAG, 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 both WHD and OAG in working together to address the need for information sharing, coordinated investigations, cross training staff, and outreach between WHD and OAG.

Agencies

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).

The Pennsylvania Office of the Attorney General, is an agency of the Commonwealth of Pennsylvania, created in accordance with the Commonwealth Attorneys Act, 71 P.S. §§ 732-101, *et seq.* (1980). The OAG has various divisions and sections that may be relevant here. Among them, the OAG Fair Labor Section has a mission which includes affirmative and public educational efforts to combat wage theft and related issues and to protect the rights of workers, as well as businesses that abide by wage, hour and safety laws.

Contacts

- The Agencies will designate a contact person responsible for coordinating the partnership activities.
- 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 joint investigations in the Commonwealth of Pennsylvania.
2. The Agencies will coordinate their respective enforcement activities and assist each other with enforcement.
3. The Agencies will make referrals of potential violations of each other's statutes.

Effect of Agreement

4. 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.
5. 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.

6. Nothing in this Agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory functions.
7. 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.
8. 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.
9. This Agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, Pennsylvania's Right to Know Law and Commonwealth Attorneys Act, and any other applicable federal and Pennsylvania laws.

Exchange on Information

10. It is the policy of WHD and the OAG 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 WHD's and OAG's statutory obligations and enforcement efforts. It is the view of WHD and OAG 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 WHD and the OAG to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or otherwise making a public disclosure.
11. 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 such information constitutes investigatory records under Pennsylvania's Right to Know Law, 65 P.S. §67.708.
12. "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.

13. "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.
14. When Confidential Information is exchanged it shall be accessed and used for the 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 Pennsylvania Right-to-Know Law. Upon receipt of a public disclosure request, OAG agrees to provide WHD with notice of the request and an opportunity to pursue legal action to prevent the release of information.
15. 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, to preclude or restrict the production of such information 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.
16. 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.
17. 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.
18. In addition to the requirements above, Confidential Unemployment Compensation Information may be exchanged only subject to the confidentiality requirements of 20 C.F.R. Part 603 and the applicable Commonwealth of Pennsylvania laws, including, but not limited to, 34 Pa. Code §61.25.
19. In the event that there is a public proceeding, such as a trial in which Confidential Information may be used and/or testimony of WHD's employees sought, the WHD

requires that OAG notify WHD. In the event there is a public proceeding, such as a trial, in which Confidential Information may be used and/or testimony of OAG's employees sought, OAG requires that WHD notify OAG.

20. 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.
21. 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.
22. 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:

23. The Agencies agree to exchange information on laws and regulations of common concern to the Agencies, to the extent practicable.
24. The Agencies will establish a methodology for exchanging investigative leads, complaints and referrals of possible violations, to the extent allowable by law and policy.
25. The Agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographical areas, if possible.
26. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

Outreach and Education

27. 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.

28. The Agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
29. 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

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 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 cancellation. Renewal of the Agreement may be accomplished by written Agreement of the parties.

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

This Agreement is effective this 20 day of DECEMBER, 2017.

United States Department of Labor
Wage and Hour Division

Pennsylvania Office of the Attorney General

By: 

Bryan Jarrett
WHD Deputy Administrator

By: 

Josh Shapiro
Attorney General
Commonwealth of Pennsylvania

By: 

Mark H. Watson Jr.
WHD Regional Administrator

