

MEMORANDUM OF UNDERSTANDING

BETWEEN

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

AND

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The United States Department of Labor (DOL), Wage and Hour Division (WHD), and the U.S. Equal Employment Opportunity Commission (EEOC) (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to enhance and maximize the enforcement of the federal laws administered between the two agencies. The agencies are forming this partnership to encourage greater coordination between each other through information sharing, joint investigations, training, and outreach.

This memorandum of understanding (MOU) is intended to memorialize this partnership between WHD and the EEOC. This MOU is a voluntary agreement that expresses the good-faith intentions of WHD and the EEOC, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party, private person, or other third party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, or services, nor does this MOU require or authorize any kind of financial commitment on the part of the agencies. This memorandum outlines procedures to be followed by both WHD and the EEOC in working together to address the need for information sharing, joint investigations, training, and outreach between WHD and the EEOC. Nothing in this MOU limits the agencies’ enforcement of their respective statutes.

WHD is responsible for administering and enforcing federal labor laws, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 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.

The EEOC enforces the Equal Pay Act of 1963 (EPA), Title VII of the Civil Rights Act of 1964, as amended, including the Pregnancy Discrimination Act of 1978 (Title VII), Title I of the Americans with Disabilities Act of 1990, as amended (ADA), the Age Discrimination in Employment Act of 1967 (ADEA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA).

The parties agree as follows:

I. Purpose

The purpose of this MOU is to maximize and improve the enforcement of the federal laws administered by DOL’s WHD and by the EEOC. This MOU will also encourage enhanced

law enforcement and greater coordination between the agencies through information sharing, joint investigations, training, and outreach.

By entering into this MOU, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other. Nothing in this MOU 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 MOU also does not limit or restrict the agencies from participating in similar activities or arrangements with other entities.

II. Agency Authorities And Responsibilities As Interpreted And Enforced By The Enforcing Agency

A. Wage and Hour Division:

Among other laws establishing worker protections, WHD enforces the FLSA, FMLA, MSPA, and worker protections provided in several temporary visa programs, including H-2A, which governs temporary employment of foreign workers in agriculture. The FLSA establishes minimum federal standards for wages and hours of work, including requirements for the payment of overtime pay and of minimum wages. It also requires that certain nursing mothers receive a "reasonable break time" to express breast milk in a place other than a bathroom. Section 14(c) of the FLSA permits certain employers, when necessary to prevent the curtailment of employment opportunities, and subject to WHD certification, to pay sub-minimum wages to workers who have disabilities. The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping.

B. Equal Employment Opportunity Commission:

The EEOC enforces the nation's equal employment opportunity laws. They include the EPA, which prohibits employers from paying employees at a rate less than employees of the opposite sex at the same establishment "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . ." 29 U.S.C. § 206(d)(1). Title VII prohibits employment discrimination, including discrimination in compensation, based on race, color, religion, sex, or national origin. Title VII's prohibition against sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions; gender identity (including transgender status); and sexual orientation. The ADA prohibits discrimination against qualified individuals on the basis of disability, including but not limited to compensation discrimination, discriminatory job assignments, failure to make reasonable accommodations, and unlawful harassment and other discriminatory terms and conditions of employment. In addition, Title VII and the ADA protect workers with caregiving responsibilities from discrimination based on sex, disability, or stereotypical assumptions related to these protected bases about the worker's ability to perform. The ADEA prohibits age discrimination against people who are age 40 or older. GINA

prohibits discrimination against applicants, employees, and former employees on the basis of genetic information (including family medical history).

III. Exchange of Information

A. Information Sharing:

1. WHD and the EEOC may share, whether upon request or upon an agency's own initiative, any information or data that supports each agency's enforcement mandates, whether obtained in the course of an investigation or through any other sources to the extent permitted by law. This may include complaint referrals and other sharing of information in complaint or investigative files relating to alleged violations of the laws enforced by WHD and the EEOC. The agencies will explore ways to efficiently systematize procedures to facilitate such information and data sharing, particularly in the areas of unlawful compensation practices, such as unlawful denial of minimum wages or overtime pay, and discrimination in compensation under the EPA and/or Title VII or the other EEO statutes; working and living conditions of employees; denial of required break times or places for nursing mothers to express breast milk; unlawful denial of family and medical leave and leave-related discrimination based on disability, pregnancy, or caregiving responsibilities; employment opportunities for individuals with disabilities; and the identification and investigation of complex employment structures.
2. This MOU 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. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
3. Requests for information under this section can be made by the following individuals:
 - (a) For DOL/WHD
 - The Administrator
 - The Deputy Administrator
 - The Regional Administrators
 - The Director of the Division of Enforcement Policy and Procedure
 - The Associate Solicitor, Division of Fair Labor Standards
 - Regional Solicitors of Labor
 - The WHD MOU Coordinator
 - (b) For the EEOC
 - The Chair
 - A Commissioner
 - The General Counsel
 - The Deputy General Counsel
 - The Director of Office of Field Programs

- The Director of Field Management Programs
- Any EEOC District Director, the Director of the Washington Field Office, or their designees
- Any EEOC Regional Attorney or his/her designee
- The EEOC MOU Coordinator

B. Points of Contact (POC) for Requests for Information and Responses:

1. Requests for information under this section should be directed to the following individuals:

(a) WHD requests for information should usually be directed to the EEOC District Director, the Washington Field Office Director, or the Regional Attorney where WHD believes that the information is located. WHD requesting officials may also direct their requests for information to any of the EEOC officials listed in III.A.3(b) above with the exception of the Chair, a Commissioner, or the General Counsel.

(b) EEOC requests for information should usually be directed to the WHD Regional Administrator in the region where the EEOC believes the information is located. EEOC requesting officials may also direct their requests for information to any of the DOL or WHD individuals listed in III.A.3(a) above with the exception of the Administrator.

2. Responses to requests for information under this section should be directed to the following individuals:

WHD and EEOC responses to requests for information under this section shall be made to the official who requested the information. The responding agency will provide copies of the requested documents or make the requested documents available to the requesting agency for inspection and copying and/or loan within 10 days of receipt of the request, or as soon as practicable thereafter consistent with the availability of the responding agency's staff and other resources and the responding agency's own priorities.

3. Any transfer of information under this MOU shall only be made where not otherwise prohibited by law and in accordance with Section III.E. of this MOU. Information transferred between WHD and the EEOC under this MOU shall not be used by the receiving agency for purposes other than the enforcement of the laws enforced by the receiving agency.
4. This MOU does not prohibit the sharing of information between WHD and the EEOC by any means other than those identified in this section to the extent that such means are agreed to by both agencies and not prohibited by law.

C. Coordinated Investigations:

In appropriate cases the agencies will determine whether to conduct coordinated investigations of matters arising within both agencies' jurisdictions. If the agencies decide to conduct coordinated investigations, and WHD finds a violation and the EEOC finds reasonable cause, they shall explore with the charging party and the respondent whether they both consent to publicize any possible resolution. If one or both decline to consent, WHD and the EEOC shall negotiate separate administrative settlements with the respondent, and neither WHD's settlement nor its press release, if any, may make any mention of the Title VII, ADA, or GINA component of the coordinated investigation or of the EEOC, or disclose any information from which it may be inferred that there was an EEOC charge or investigation.

D. Training and Outreach:

WHD and the EEOC shall provide training to each agency's staff; engage in outreach and public education; share or co-develop training materials and programs; or develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the agencies enforce relating to compensation discrimination under the EPA and/or Title VII or the other EEO statutes, other unlawful compensation practices (such as violations of the FLSA, including applicability of Section 3(m) and Section 14(c)), disability discrimination, and leave-related violations of the FMLA and/or Title VII or the ADA. The agencies' training, outreach, and education efforts shall include coordination on the experiences and enforcement perspectives of each agency in identifying and investigating complex employment structures. The agencies may also meet periodically, and otherwise routinely share information, about their enforcement priorities and other identified employment trends.

E. Confidentiality and Disclosure:

1. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal statutes or 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; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal 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.
2. Confidential information obtained pursuant to this MOU or any process established to implement the MOU, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. Except as set forth in this paragraph, such information

may not be used or disclosed by the receiving party for other purposes outside of the MOU or any process established to implement the MOU, to other authorities, or any third parties unless the producing party expressly approves such use or disclosure in writing. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act, the Trade Secrets Act, Sections 706(b) and 709(e) of Title VII, Section 107(a) of the ADA, and Section 207(a) of GINA. When responding to a federal court order, a producing party shall notify and confer with the supplying party prior to duplicating or disclosing information.

3. In the event that there is a public proceeding, such as a trial, in which records or testimony of the other agency may be used or will be sought, the party involved in the public proceeding shall notify the other agency.
4. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, 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.
5. 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.
6. The agencies will notify one another, through the agency POC identified in this MOU, 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 MOU.

F. Information Security:

1. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU 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 day following the agreed upon delivery date.
2. 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.

3. 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 MOU, 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 MOU may have been inadvertently disclosed.
4. At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the donor agency, except as required by law, including the Federal Records Act.

IV. Previous Agreements

This MOU supersedes the April 7, 1999 Memorandum of Understanding between DOL's Employment Standards Administration and the EEOC.

V. Resource Provisions

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities. This agreement does not itself 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.

VI. Totality and Entire Agreement

Except as expressly provided in this MOU, this MOU constitutes the entire agreement between WHD and the EEOC with respect to the matters set forth herein.

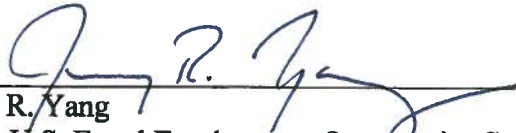
VII. Effective Date

This MOU will take effect immediately once signed by both parties and shall continue in force indefinitely. This MOU may be modified in writing by mutual consent of both agencies. This MOU may be terminated by either party upon 90 days written notice to the other agency. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.


This MOU is executed as of the 6th day of January, 2017.

The following officials agree to the terms and conditions of this MOU:

For the EEOC:




Jenny R. Yang
Chair, U.S. Equal Employment Opportunity Commission

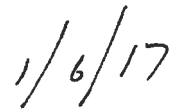


Date

For the Department of Labor:



Dr. David Weil
Administrator, Wage and Hour Division
U.S. Department of Labor



Date