

September 02, 2015

MOU Signing

**U.S. Department of Labor
Wage and Hour Division (WHD)**



BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND THE
STATE OF HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

This Agreement is made and entered into this 2nd day of 9 2015, by and between the United States Department of Labor Wage and Hour Division (hereinafter referred to as "WHD" or "Department") and the State of Hawaii's Department of Labor and Industrial Relations, Wage Standards Division (hereinafter referred to as "DLIR"), together collectively referred to herein as "the agencies" or "the parties".

PURPOSE OF AGREEMENT

Over the past three years, the agencies have been working together under the guidance of an agreement signed in August 2011. The agencies recognize the value of continuing the collaborative relationship to promote compliance with state and federal laws addressing areas of common concern among the regulated community of the State of Hawaii (hereinafter referred to as "Hawaii"). 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, and share information to directly advance the respective missions of the agencies.

BACKGROUND

The parties are each obligated to enforce laws relating to wages and hours of work, employee safety and health, and other legal requirements designed to protect working men and women.

The 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. WHD enters into this Agreement pursuant to its statutory authority under 29 U.S.C. § 211(b).

DLIR is responsible for administering and enforcing State laws on minimum wages, overtime

premiums, State prevailing wage, payment of wages and other compensation, child labor, Hawaii family leave, and recordkeeping requirements for the Hawaii workforce. DLIR is also responsible for educating the community.

WHEREAS, in connection with such enforcement, the parties' areas of jurisdiction and activities may overlap, making it desirable for the parties to share resources and enhance one another's enforcement of the law by sharing information and/or conducting coordinated investigations consistent with applicable law; and

WHEREAS, the parties also share the specific and mutual goals of providing clear, accurate, and easy to access information to employers, employees, and other stakeholders; and

Therefore, the parties desire to enter into this Agreement to set forth the terms of this partnership in furtherance of these mutual interests and goals.

Nothing in this Agreement should be read to limit the parties' enforcement of these and other laws.

CONDITIONS AND PROTOCOLS TO ADVANCE THE PURPOSE OF THIS AGREEMENT

Contacts

1. The parties will designate a Point of Contact responsible for coordinating the partnership activities. Information regarding the contact person, including name, title, business address, phone and email address, will be shared between the parties at the time of execution of this Agreement and at the time that the identity of the contact person changes. The parties will also designate a representative to meet annually either in person, by teleconference, or other electronic means with their counterpart in the other agency to review areas of mutual concern and the terms and conditions of the partnership.
2. The Points of Contact will monitor partnership activities, maintain relevant information on partnership activities and provide criteria for carrying out partnership activities.
3. The Points of Contact will be responsible for coordinating enforcement activities, data sharing, and exchange of information as necessary.

Enforcement and Data Sharing

1. Where the parties mutually determine it to be appropriate and allowable under law, the parties may:
 - a. Coordinate investigations and other enforcement activities in Hawaii to assist each other with enforcement or investigate cases jointly, based on the employer's business operations, in designated priority industries, for areas of mutual concern, or on cases involving overlapping jurisdiction.

- b. Make referrals to one another of complaints or potential violations of laws over which the other party has jurisdiction or expertise, such as certain federal overtime exemptions.
- c. Accept referrals from one another of complaints or potential violations of laws over which the other party has jurisdiction.
- d. Provide information regarding settlements or other dispositions of cases to the other party in a mutually agreed upon format so that appropriate follow-up may take place.
- e. Notify each other of any requests for information affecting shared data under Freedom of Information laws so that the parties may be respond in a manner consistent with Exchange of Information Section of this Agreement.

Outreach and Education

1. Where the parties mutually determine it to be appropriate and allowable under law, the parties may:
 - a. Conduct joint outreach presentations, and prepare and distribute publications of common concern for the Hawaii community, subject to available funds.
 - b. Provide information to the other party's personnel, upon request, concerning changes in federal or Hawaii labor laws and/or interpretations thereof.
 - c. All public materials bearing the United States Department of Labor ("DOL") or WHD name, logo, or seal must be approved in advance by DOL. All public materials bearing the DLIR name, logo, or seal must be approved in advance by DLIR. 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.

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 agreement containing financial obligations.
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. Nothing in this Agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
3. This Agreement contains all the terms and conditions agreed upon between the parties concerning the subject matter of the Agreement. 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.

4. 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.
5. This Agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal and Hawaii laws.

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 will 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 on basically the same matter 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.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the parties agree as follows:

1. The parties agree to exchange information on laws and regulations of common concern and interest, to the extent practicable.
2. The contacts will continue to improve their methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law and policy.
3. The parties will be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
4. The agencies will exchange aggregate statistical information on incidence of violations in specific industries and geographic areas, if available.
5. Exchange of information to one another pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552, the Federal Records Act or applicable Hawaii laws.
6. 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 regulations. 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 or witness statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or DLIR

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.

7. When confidential information is exchanged, it shall be in conformance with §92F-19(a)(3), Hawaii Revised Statutes, and 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 re-disclosed without the consent or authority of the agency providing the information (hereinafter the "donor agency") or a court order. The information shall be stored in a protected location and treated as evidence.
8. The parties 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. For information security purposes, information exchanged (including, but not limited to paper-based documents and electronic information such as emails and CDs, etc.) 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.
10. 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 and notify any individuals of the breach as required by law. 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.

Resolution of Disagreements

Disputes arising under this Agreement will be resolved informally by discussions between appropriate Agency officials and staff upon request for such discussion made between the agency Points of Contact.

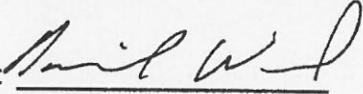
Period of Agreement

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 termination. Renewal of the Agreement may be accomplished by written agreement of the parties.

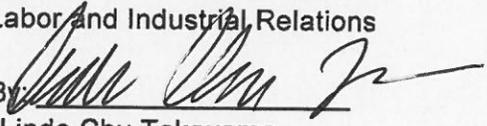
Provisions related to the confidentiality and handling of information exchanged pursuant to this Agreement shall survive the termination of this Agreement.

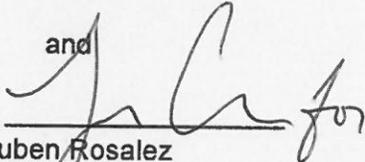
This Agreement is executed as of the 2 day of September, 2015.

United States Department of
Labor Wage and Hour Division

By: 
Dr. David Well
Administrator, USDOL

State of Hawaii Department of
Labor and Industrial Relations

By: 
Linda Chu Takayama
Director

and
By: 
Ruben Rosalez
Regional Administrator, USDOL