

COMMON INTEREST AGREEMENT

BETWEEN

WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

AND

MONTANA DEPARTMENT OF LABOR AND INDUSTRY

This Agreement is made and entered into by and between the Wage and Hour Division of the United States Department of Labor (“the Department”) and the Montana Department of Labor and Industry (“Montana” or the “State”). The Department and Montana are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of Montana. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest, including but not limited to sharing training materials, and providing employers and employees with compliance assistance information to protect the wages of America’s workforce. It also includes coordinated enforcement actions and sharing information as appropriate.

Authority

The Department enters this MOU pursuant to its authority in 29 U.S.C. §§ 211 and 551. Montana enters this MOU pursuant to its authority in §2-15-112(2), 39-1-102 and §39-1-104, MCA.

Agency Responsibilities

The Department is responsible for administering and enforcing a wide range of 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, the prevailing wage requirements of the Davis-Bacon and Related Acts, and the Service Contract Act. Nothing in this agreement limits the Department’s enforcement of these and other statutes.

Montana is responsible for administering and enforcing a wide range of state labor laws, including laws for the protection and payment of wages at Title 39, Chapter 3, unemployment insurance at Title 39, Chapter 51, workers' compensation coverage at Title 39, Chapter 71, human rights protections at Title 49, and Montana's "Little Davis Bacon Act" at Title 18, Chapter 2, part 4, each in the Montana Code Annotated. Nothing in this agreement limits the State's enforcement of these and other statutes.

Contacts

- Each party will designate a contact person responsible for coordinating activities covered under this Agreement.
- Each party will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the parties may conduct coordinated enforcement actions of common interest periodically in the State of Montana, as mutually agreed upon.
- The parties will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The parties may 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 any party to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any party 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 or superseding 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, 20 CFR 603, and any other applicable federal laws and laws of the State.

Exchange of Information

- The Department and the State endeavor 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 each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information – including certain documents, factual materials, mental impressions, memoranda, interview reports, research and other information, some of which may be privileged – in cases of common interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between the Department and the State.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal statutes, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: 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 any of the parties' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; 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/or the attorney work-product privilege; personal information on living persons; individually identifiable health information; and confidential business information and trade secrets. Any physical material or other documents containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- Acknowledging that privileges and protections (including without limitation the investigative files privilege, informant's privilege, attorney-client privilege, work product doctrine, deliberative process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared 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 further disclosed without the written authorization of the party that provided it, unless the information is required to be disclosed by Court order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.
- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.

- 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, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- 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.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement or other means of disposition.
- Neither party shall further disclose to any person or entity any privileged information provided under this Agreement except to authorized personnel. Such authorized personnel shall be required to agree not to use or disclose such privileged information except as designated or assigned by the disclosing agency or Department, which is otherwise bound by the terms of this Agreement.

Subject to the foregoing constraints:

- The parties agree to exchange information on laws and regulations of common concern to the other parties, as requested and to the extent practicable.
- The parties will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.
- The parties will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable

Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between parties' Points of Contact, or other officials designated by a party.

Period of Agreement

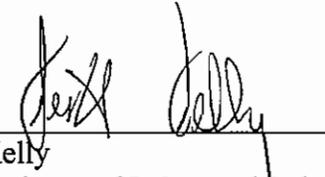
- This Agreement becomes effective upon the signing by all parties, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all parties. Any party may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all parties.

This agreement is effective as of the 26th day of September, 2011.

United States Department of Labor
Wage and Hour Division

State of Montana
Department of Labor and Industry

By: 
Nancy Leppink
Deputy Administrator

By: 
Keith Kelly
Commissioner of Labor and Industry