

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE US DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND
THE NORTH CAROLINA INDUSTRIAL COMMISSION, EMPLOYEE CLASSIFICATION
SECTION**

This Memorandum of Understanding (MOU) between the United States Department of Labor, Wage and Hour Division (hereinafter referred to as "WHD") and the North Carolina Industrial Commission, Employee Classification Section (hereinafter referred to as the "Section") sets forth the agreement, together collectively referred to the "the agencies" or "the parties" with respect to a joint initiative to improve compliance with laws and regulations administered by the WHD and the Section. This will be accomplished through enhanced information sharing and other collaboration. A joint WHD-Section team will lead this initiative.

Purpose

The sharing of information and collaboration between the parties will help reduce the incidence of misclassification of employees as independent contractors, help reduce the tax and benefits gap, and improve compliance with federal labor wage payment laws. Increased collaboration will also strengthen the relationship between WHD and the Section, enable both agencies to leverage existing resources and send a consistent message to employers about their duties to properly pay their employees and to pay employment taxes, workers compensation and unemployment benefits.

Specific objectives of this initiative include the following:

- Increase compliance with state employment and unemployment tax requirements
- Increase compliance with federal labor laws enforced by the DOL, including wage payment laws
- Reduce abusive employment/unemployment schemes
- Reduce worker misclassification
- Reduce questionable employment tax practices, workers compensation
- Work together to create educational and outreach materials and guidance for employers and workers

Agency Responsibilities

WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act, the Family 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. DOL enters into this MOU under the authority provided by 29 U.S.C. § 211(b), which authorizes DOL to cooperate with State agencies charged with the administration of State labor laws. Nothing in this agreement limits the WHD's enforcement of these and other statutes.

On December 18, 2015, North Carolina Governor Pat McCrory signed Executive Order No. 83, establishing the Employee Classification Section within the North Carolina Industrial Commission. The Section has a mission to identify businesses and has ordered the Secretary of Revenue, the Chairman of the Industrial Commission and the Assistant Secretary of Commerce for the Division of Employment

- The Section will, at its discretion and consistent with applicable state laws, share the referrals provided by the WHD with additional state agencies, to include: the North Carolina Industrial Commission – Fraud Investigations Section; the North Carolina Department of Labor; the North Carolina Department of Commerce - Division of Employment Security and the North Carolina Department of Revenue.
- The Section will provide annual reports to the WHD summarizing the results achieved by using WHD referrals. These reports will be provided only if the results can be compiled in a manner that protects return information, including taxpayer identities, in accordance with legal requirements.
- The Section will share training materials and opportunities with the WHD to the extent possible.
- The Section will participate in joint outreach events with the WHD to the extent possible.
- All public materials bearing the United States Department of Labor ("USDOL") or WHD name, logo, or seal must be approved in advance by USDOL. 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.
- The Section will annually provide the WHD with aggregate data relating to trends in misclassification.
- The Section will, at its discretion, provide WHD with information which may constitute evidence of a violation of any Federal law that the WHD enforces.

Disclosure, Safeguards and Recordkeeping Requirements

It is the policy of WHD to cooperate with state agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with the WHD's statutory obligations and enforcement efforts. It is the WHD's view that an exchange of information in cases in which both entities are proceeding on related matters is to our mutual benefit. There is a need for the government to provide information to other law enforcement bodies without making a public disclosure.

Accordingly, the parties intend to pursue their common interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to this MOU. Further:

- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

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.

- In the event that there is a judicial proceeding brought by the employer after a Section examination based on information from a WHD referral, the Section will, when possible, notify WHD and provide WHD with a copy of the filed complaint or petition.

Subject to the foregoing constraints

- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, 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.
- Liability of the U.S. Government is governed by the Federal Torts Claims Act.

Transmittal Procedures

A. Transmissions from WHD to the Section:

- At its discretion, the WHD will send any information, data, and materials subject to this MOU to the Section at the following address:
North Carolina Industrial Commission
Employee Misclassification Section
4333 Mail Service Center
Raleigh, NC 27699
- The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

B. Transmissions from the Section to WHD:

- At its discretion, the Section will send any information, data, and materials subject to this MOU to the WHD designees.

Limitations

- This MOU does not confer any rights or benefits on any third party.

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.

This agreement is effective as of the 31st day of August, 2016.

United States Department of Labor
Wage and Hour Division

By: David Weil
David Weil
Administrator

By: Wayne Kotowski
Wayne Kotowski
Southeast Regional Administrator

By: Richard Blaylock 8/31/2016
Richard Blaylock
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State of North Carolina
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By: Bradley L. Hicks
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