

PARTNERSHIP AGREEMENT

BETWEEN

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

AND

THE VIRGINIA EMPLOYMENT COMMISSION

This Agreement is made and entered into by and between The United States Department of Labor's Wage and Hour Division (hereinafter referred to as "WHD" or "Department") and the Virginia Employment Commission (hereinafter referred to as "VEC"), together collectively referred to as the "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 Virginia. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including sharing training materials, providing employers and employees with compliance assistance information, conducting coordinated investigations, and sharing information as appropriate.

Agency Responsibilities

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. 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.

VEC is responsible for administering and enforcing the laws of Virginia relating to administration of an unemployment compensation program in accordance with Title 60.2, Code of Virginia, as amended.

Contacts

1. The agencies will designate a contact person responsible for coordinating the partnership activities. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
2. The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.

Enforcement

Where appropriate and to the extent allowable under law,

3. The agencies may conduct joint investigations periodically in the Commonwealth of Virginia when opportunity provides.
4. The agencies will coordinate their respective enforcement activities and assist each other with enforcement.
5. The agencies will make referrals of potential violations of each other's statutes.

Effect of Agreement

6. 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.
7. 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.
8. Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions.
9. 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.
10. 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 arrangement with other entities.
11. This agreement 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 and state laws [Title 20, Code of Federal Regulations, Chapter 5, Part 603; Virginia Unemployment Compensation Act, § 60.2-100 et. seq of the *Code of Virginia*.; Virginia Freedom of Information Act (FOIA) § 2.2-3700 et seq.; Virginia Government Data Collection and Dissemination Practices Act (Privacy

Act) § 2.2-3800 et seq.; Virginia Information Technology Resource Management (COV ITRM) Policies, Standards, and Guidelines including current Standards SEC 501 and SEC 519]

Exchange of Information

12. It is the policy of WHD and VEC 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 VEC's own statutory obligations and enforcement efforts. It is WHD's and VEC's view that an exchange of information in cases in which both entities are proceeding on basically the same matter is to our mutual benefit. There is a need for WHD and VEC to provide information to other law enforcement bodies without making a public disclosure.
13. Exchange of such information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
14. Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. 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 WHD's 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.
15. Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603.2(b), means any unemployment compensation information, as defined in 20 CFR 603.2(j), required to be kept confidential under 20 CFR 603 or its successor law or regulation.
16. When confidential information is exchanged 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 redisclosed without the written authority of the agency providing the information (hereinafter the "donor agency") or a court order.
17. In addition to the requirements above, Confidential Unemployment Compensation (UC) information may be exchanged only subject to the confidentiality requirements of 20 CFR Part 603 and the Virginia Unemployment Compensation Act § 60.2-100 *et. seq.* of the *Code of Virginia* .
18. Information collected for the UC program shall not be published or used in any administrative or judicial proceeding, except in matters arising out of the collection of fines, penalties, and costs owed to the Commonwealth and its political subdivisions. (§60.2-114, Code of Virginia).
19. Exchange of confidential UC information facilitated by secure file transfer protocol (SFTP). VEC's secure FTP site provides automated email notifications to designated contact persons when files uploaded. WHD is responsible for maintaining FTP client software that supports SFTP (also known as FTP over SSH2) for transferring files to and from VEC's FTP secure data exchange site. Files available for download will be deleted automatically after ten (10) days.
20. Recipients of UC information are required to safeguard the information disclosed against unauthorized access or redisclosure, as provided in 20 CFR §603.9.

21. Confidential UC information may only be exchanged subject to the following safeguards:
- a. Only confidential UC information relating to misclassification of employees as independent contractors will be disclosed, and this disclosure will be made only to authorized individuals.
 - b. Parties to this Agreement shall: (1) instruct all personnel having access to the confidential UC information about confidentiality requirements and the sanctions for unauthorized disclosure; (2) sign an acknowledgement that all personnel having access to the confidential UC information have been so instructed; (3) maintain a system sufficient to allow an audit or compliance with the requirements of this Agreement with respect to confidential UC information; and (4) allow an on-site inspection of its systems for storing confidential UC information at a mutually agreeable time.
 - c. Confidential UC information shall be stored in a place physically secure from access by unauthorized persons.
 - d. Confidential UC information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
 - e. Confidential UC information shall be returned to the VEC or destroyed when no longer needed for the purpose of this Agreement or upon termination of this Agreement.
 - f. If a recipient of confidential UC information fails to comply with any provision of this Agreement, VEC must, in accordance with 20 CFR 603.10 (c), suspend the Agreement and make no further disclosure until VEC is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, VEC will cancel the Agreement and WHD will surrender all confidential UC information (and copies thereof) obtained under this Agreement.
 - g. VEC must take other remedial actions permitted under State or Federal law to effect adherence to the terms of this agreement, including seeking damages, penalties, and restitution as permitted under such law for any charges to granted funds and all costs incurred by the VEC in pursuing the breach of the agreement and enforcement (20 CFR §603.10 (c)(2)).
22. 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.
23. 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 24 hours 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; cause of the security incident; date(s) of the security incident; estimated size of the affected population (number of UC records); and, any mitigating circumstances.

Subject to the foregoing constraints:

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

Resolution of Disagreements

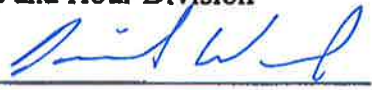
28. Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

Period of Agreement


29. 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.
30. WHD and VEC both benefit from the exchange of information described in this agreement. By entering into this agreement, WHD and the VEC can conduct joint investigations, coordinate enforcement activities, and keep each other informed of potential violations of each other's statutes.

This agreement is effective as of the 16th day of June, 2016.

United States Department of Labor
Wage and Hour Division

By: 
Dr. David Weil
Wage and Hour Administrator

Commonwealth of Virginia
Virginia Employment Commission

By: 
Ellen Marie Hess
Commissioner

By: 
Mark Watson Jr.
Northeast Regional Administrator

