

MEMORANDUM OF COOPERATION
BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION
AND
THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY

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 "DOL") and the Commonwealth of Pennsylvania, Department of Labor and Industry (hereinafter referred to as "PADLI"), 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 Agencies 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 Pennsylvania. 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. This Agreement is intended to memorialize this understanding between the Agencies. This MOU is a voluntary agreement that expresses the good-faith intentions of the Agencies.

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.

The PADLI is responsible for administering and enforcing fourteen (14) laws of Pennsylvania relating to labor, including the Construction Workplace Misclassification Act (commonly referred to as “Act 72”), Prevailing Wage Act, Child Labor Act, Minimum Wage Act, Wage Payment Collection Law, Prohibition of Excessive Overtime in Health Care Act (commonly referred to as “Act 102”), Medical Pay Law, Apprenticeship and Training Act, Equal Pay Law, Industrial Homework Law, Personnel File Inspection Act, Seasonal Farm Labor Act, Construction Industry Employee Verification Act, and Workers’ Compensation Act, and the regulations promulgated under each.

Contacts

- The Agencies designate the following contact persons (below) 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.
- The Agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.

For WHD:

Alfonso Gristina, District Director
Wage and Hour Division
US Department of Labor
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Wilkes-Barre, Pennsylvania 18702
Gristina.Alfonso@dol.gov

For PADLI:

Mr. Bryan Smolock, Director
Bureau of Labor Law Compliance
Department of Labor and Industry
651 Boas Street, Room 1301
Harrisburg, PA 17121
bsmolock@pa.gov

Marianne H. Saylor, Director
Bureau of Workers’ Compensation
Department of Labor and Industry
1171 S. Cameron Street
Harrisburg, PA 17104-2501
masaylor@pa.gov

Enforcement

Where appropriate and to the extent allowable under law,

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

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 obligation.
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.
3. Nothing in this agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory functions.
4. 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.
5. 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.
6. 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 such as the Pennsylvania Right-to-Know Law and the Commonwealth Attorneys Act.
7. This MOU agreement is not intended to be legally binding and does not confer any rights on any private person.
8. This MOU agreement is an internal government agreement and is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.

Exchange of Information

9. It is the policy of WHD and PADLI 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 PADLI's own statutory obligations and enforcement efforts. It is WHD's and PADLI's view that an exchange of information

in cases in which both entities are proceeding on the same matter is to their mutual benefit. There is a need for WHD and PADLI to provide information to other law enforcement bodies without making a public disclosure.

10. Exchange of such information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552 and constitutes investigatory records and/or information relating to individuals' workers' compensation claims excepted from the definition of public records under the Pennsylvania Right-to-Know Law, 65 P.S. § 67.708.
11. Confidential information ("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. 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 the agencies' enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state personnel, 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; confidential business information and trade secrets; and information relating to individuals' workers' compensation claims.
12. 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 re-disclosed without the written authority of the agency providing the information (hereinafter "donor agency"), except as required by a court order, or as required by law, including the Freedom of Information Act and Pennsylvania's Right to Know Law. In the event that information is required to be re-disclosed the agency that received the information shall notify the donor agency.
13. USDOL will be responsible for maintaining the confidentiality of information relating to individuals' workers' compensation claims ("Confidential WC Information") provided by PADLI and ensure that the data is used and maintained in accordance with federal records laws and other applicable federal laws. USDOL will ensure that only those employees who are essential to the review and use of the data will have access to the data. The specific data elements comprising the Confidential WC Information that will be exchanged on a quarterly basis between PADLI and USDOL are set forth in Appendix A.
14. In the event that there is a public proceeding, such as a trial, in which Confidential Information may be used or testimony of WHD's employees sought, the WHD requires that PADLI notify WHD. In the event that there is a public proceeding, such as a trial, in which Confidential Information may be used or testimony of PADLI's employees sought, the PADLI requires that WHD notify PADLI.
15. 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 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.

16. 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.
17. The agencies will notify one another, through the agency POC 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.
18. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged 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. Confidential data will be used and maintained in accordance with the records laws that apply to the Agency that receives it. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards. Confidential data may be transmitted via secure FTP.
19. 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 receiving Agency.
20. 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 receiving 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. 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.
21. This agreement does not contemplate or apply to the exchange or release of unemployment compensation (UC) data or information. Any request for the exchange or release of UC data or information will require a separate data sharing agreement.
22. The Agencies agree to exchange information on laws and regulations of common concern to the Agencies, to the extent practicable.
23. The Agencies will establish a methodology for exchanging investigative leads,

complaints, and referrals of possible violations, to the extent allowable by law and policy.

24. The Agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible.

25. 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 Records Retention Act.

26. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

Resolution of Disagreements

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

Previous Agreements

- This Agreement replaces and supersedes any previous Agreement between the parties.

Period of Agreement

- This agreement becomes effective upon the signing of both Agencies and will expire five (5) 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 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 19th day of August, 2022.

United States Department of Labor
Wage and Hour Division

Commonwealth of Pennsylvania,
Department of Labor and Industry

By: _____
Mark H. Watson, Jr.
Regional Administrator Northeast
Region

By: _____
Jennifer L. Berrier
Secretary of Labor and Industry
Commonwealth of Pennsylvania