

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

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

AND

**THE NORTH CAROLINA INDUSTRIAL COMMISSION, EMPLOYEE
CLASSIFICATION SECTION**

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as "DOL/WHD" or "Department"), and the North Carolina Industrial Commission, Criminal Investigation and Employee Classification Division, Employee Classification Section (hereinafter referred to as (the "Section") (collectively referred to as "the agencies" or "the parties") recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the regulated community in the state of North Carolina.

The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including sharing training materials, conducting joint investigations, and sharing information as appropriate.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (MOU) agreement is intended to memorialize this understanding between DOL/WHD and the Section. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and the Section; it is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This MOU agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This MOU agreement outlines procedures to be followed by both DOL/WHD and the Section in working together to address the need for reducing the incidence of violations of law supported by the respective agencies, help reduce employee misclassification, help reduce the tax and benefit 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.

Agency Responsibilities

DOL/WHD enforces the Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. DOL/WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, DOL/WHD administers and enforces the prevailing

wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.

The Section receives reports of employee misclassification in North Carolina and is responsible under the Employee Fair Classification Act for investigating misclassification reports and coordinating with and assisting all relevant state agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification. The Section's statutory mandate also includes providing all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Department of Revenue, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapters 95, 96, 97, 105, or 143 of the North Carolina General Statutes.

I. Purpose

The purpose of the MOU is to maximize and improve the enforcement of the laws administered by DOL/WHM and by the Section. This agreement will also encourage enhanced law enforcement and greater coordination between the agencies.

II. Authority

The substantive authority under which the parties will be carrying out the activities contemplated in the MOU is found under 29 U.S.C. § 211 (b).

III. Outreach and Education

- The agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications, when appropriate, for the regulated community of common concern.
- The agencies agree to work with each other to provide a side-by-side comparison of laws with overlapping provisions and jurisdiction.
- The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
- The agencies agree to share training materials and opportunities to the extent possible.
- The agencies may participate in joint outreach events with the Section to the extent possible.
- All materials bearing the DOL or DOL/WHM name, logo, or seal must be approved in advance by DOL.
- All materials bearing the Section name, logo, or seal must be approved in advance by the

Section.

IV. Points of Contact (POCs)

- The agencies designate the following POCs responsible for coordinating the partnership activities and meeting annually to review terms and conditions and areas of mutual concern. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
- POC designees:

Richard Blaylock, District Director (to include Assistant District Directors Maxine Mills, Anthony Delgado, Yaimara Esquivel and Efrain Valdivia)
USDOL-WHD
(919) 900-2740 office
Blaylock.Richard@dol.gov
4407 Bland Road, Suite 260
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Miguel A. Perez, Community Outreach and Resource Planning Specialist
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Catherine Ittermann
Director of Employee Classification
North Carolina Industrial Commission
(919) 716-1733
catherine.ittermann@ic.nc.gov
1233 Mail Service Center
Raleigh, NC 27699

Sam Constance, Division Chief
Criminal Investigation and Employee Classification Division
North Carolina Industrial Commission
(910) 716-1736
Sam.Constance@ic.nc.gov
1233 Mail Service Center
Raleigh, North Carolina 27699-1233

V. Enforcement

- Where appropriate and to the extent allowable under law,
- The agencies will make referrals of potential violations of each other's statutes, where appropriate.

- The WHD may refer to the Section, at WHD's discretion and consistent with applicable law, WHD investigation information and other data that WHD believes may raise employment tax compliance, workers compensation, unemployment, and wage payment issues related to misclassification.
- The Section will evaluate and classify referrals provided by the WHD and at the Section's discretion, conduct examinations to determine compliance with North Carolina law.
- 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 – Criminal Investigations and Employee Misclassification Division and Compliance Division; the North Carolina Department of Labor; the North Carolina Department of Commerce - Division of Employment Security and the North Carolina Department of Revenue.
- The agencies may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law.

VI. Information

- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The Section will provide annual reports if available 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 annually provide the WHD with aggregate data relating to trends in misclassification.
- The Section will, at its discretion, provide WHD with information it may have that may constitute evidence of a violation of any Federal law that the WHD enforces.
- WHD will provide annual reports to the Section summarizing the results achieved by using Section 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 agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, if possible.

VII. Training

- The agencies will exchange information related to policy or regulatory changes to State or Federal laws, to the extent permissible.
- The agencies will exchange training materials and opportunities to the extent possible.

VIII. Previous Agreements

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

IX. Effect of MOU Agreement

- This MOU 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 obligations.
- By entering into this partnership, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.
- Nothing in this MOU agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This MOU agreement is not intended to be legally binding and does not confer any rights on any private person.
- This MOU agreement is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.
- Nothing in this MOU agreement will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU 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, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws and state laws.
- This MOU agreement contains all the terms and conditions agreed upon by the agencies 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 agencies. This agreement is not intended to confer any right upon any private person or other third party.

X. Exchange of Information

To the extent permitted by law, the agencies understand that in order to effectuate the purposes and provisions of this MOU, 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 agencies are proceeding with a common legal interest is to their mutual benefit. The agencies to this MOU agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or make a public disclosure.

It is the policy of DOL/WHM and the Section 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 DOL/WHM's and the Section's own statutory obligations and enforcement efforts. It is DOL/WHM's and the Section'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 DOL/WHM and the Section to provide information to other law enforcement bodies without making a public disclosure.

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

1. The agencies agree to exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
2. 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.
3. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C.552.
4. When confidential information is exchanged it will not be released to the public, or to any third party, without the express permission of the agency providing that information, except as required by law including, but not limited to, the Freedom of Information Act and the North Carolina Public Records Act. Upon receipt of a public disclosure request, the Section agrees to provide DOL/WHM with notice of the request and an opportunity to pursue legal action to prevent the release of information.
5. 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 express written consent or authority of the agency providing the information (hereinafter the "donor agency"), a court order, or as required by law, including the Freedom of Information Act and the North Carolina Public Records Act.

6. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal and state laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state employees, 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; and confidential business information and trade secrets.
7. 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 603.4 or its successor law or regulation.
8. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of DOL/WHd's employees sought, DOL/WHd requires that the Section notify DOL/WHd.
9. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of the Section employees sought, the Section requires that DOL/WHd notify the Section.
10. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU 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.
11. 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.
12. The agencies will notify one another, through the agency POC identified in this MOU, 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.
13. In addition to the requirements above, Confidential Unemployment Compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4 and any applicable state laws.

14. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU 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 POC 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 destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted.
15. 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.
16. 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 MOU agreement, the agency experiencing the incident or disaster will send formal written electronic notification to the donor agency's designated contact person immediately within 3 days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU agreement may have been inadvertently disclosed.
17. 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.
18. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

XI. Dissemination of Factual Information

- The agencies agree to jointly disseminate outreach materials to the regulated community when appropriate. Any such dissemination may not be undertaken without prior notice and approval of each party.
- All public materials bearing the United States Department of Labor ("USDOL") or DOL/WHM 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.

XII. Resolution of Disagreements

