

Memorandum of Understanding Between the U.S. Department of Labor, Wage and Hour Division and the U.S. Equal Employment Opportunity Commission

The United States Department of Labor (DOL), Wage and Hour Division (WHD), and the U.S. Equal Employment Opportunity Commission (EEOC) (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to enhance and maximize the enforcement of the federal laws administered between the two agencies. The agencies are forming this partnership to encourage greater coordination between them through information sharing, joint investigations, training, and outreach.

This memorandum of understanding (MOU) is intended to memorialize this partnership between WHD and the EEOC. This memorandum outlines procedures to be followed by both WHD and the EEOC in working together to address the need for information sharing, joint investigations, training, and outreach between WHD and the EEOC. Nothing in this MOU limits the agencies’ enforcement of their respective statutes.

DOL/WHD enforces the Federal minimum wage, overtime pay, tip retention, recordkeeping, nursing mother provisions, 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 EEOC enforces the Equal Pay Act (EPA); Title VII of the Civil Rights Act, as amended, including the Pregnancy Discrimination Act (Title VII); the Age Discrimination in Employment Act (ADEA); Title I of the Americans with Disabilities Act, as amended (ADA); Title II of the Genetic Information Nondiscrimination Act (GINA); and the Pregnant Workers Fairness Act of 2022 (PWFA).¹

The parties agree as follows:

I. Purpose

¹ The PWFA went into effect on June 27, 2023. *See* Pub. L. No. 117-328, Div. II (codified at 42 U.S.C. §§ 2000gg et seq. (2022)).

The purpose of this MOU is to maximize and improve the enforcement of the federal laws administered by DOL/WHD and by the EEOC. This MOU will encourage enhanced law enforcement and greater coordination between the agencies through information sharing, joint investigations, training, and outreach.

This MOU is a voluntary agreement that expresses the good-faith intentions of WHD and the EEOC, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party, private person, or other third party. By entering into this MOU, 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 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 does not obligate and will not result in an exchange of funds, personnel, property, or services, nor does this MOU require or authorize any kind of financial commitment on the part of the agencies. This MOU also does not limit or restrict the agencies from participating in similar activities or arrangements with other entities.

II. Agency Authorities and Responsibilities As Interpreted and Enforced By the Enforcing Agency

A. Wage and Hour Division

WHd is authorized to administer and enforce programs under several statutes, including: the Fair Labor Standards Act, 29 U.S.C. § 211; the Davis Bacon and Related Acts, 29 C.F.R. § 5.6; the McNamara O'Hara Service Contract Act, 29 U.S.C. § 6707; the Walsh-Healy Public Contracts Act, 41 U.S.C. § 6506; the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1862; the Immigration and Nationality Act, 29 C.F.R. § 655.805, 29 C.F.R. § 501.6, 29 C.F.R. § 503.7; the Employee Polygraph Protection Act, 29 U.S.C. § 2004; and the Family and Medical Leave Act, 29 U.S.C. § 2616.

The FLSA establishes minimum federal standards for wages and hours of work, including, among other things, requirements for the payment of overtime pay, minimum wages, protections to ensure that employers do not keep employees' tips, and "reasonable break time" for nursing mothers to express milk in a place other than a bathroom. The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The H-1B, H-2A, and H-2B programs govern the temporary employment of certain foreign workers and provide various protections for U.S. workers and workers with these employment visas. These federal wage and hour laws also protect from retaliation those workers who complain of violations or exercise their rights under the applicable law.

B. Equal Employment Opportunity Commission

The EEOC enforces federal equal employment opportunity laws that prohibit employment discrimination against applicants, employees, and former employees. As noted above, these laws include the Equal Pay Act (EPA), Title VII of the Civil Rights Act (Title VII), the Age Discrimination in Employment Act (ADEA), Title I of the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), and the Pregnant Workers Fairness Act of 2022 (PWFA). The EPA prohibits employers from paying employees at a rate less than employees of the opposite sex at the same establishment “for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions . . .” 29 U.S.C. § 206(d)(1). Title VII prohibits employment discrimination, including discrimination in compensation, based on race, color, religion, sex, or national origin. Title VII’s prohibition against sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions; gender identity (including transgender status); and sexual orientation. The ADA prohibits discrimination against qualified individuals on the basis of disability, including but not limited to compensation discrimination, and requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability, unless doing so would impose an undue hardship on the operation of the employer’s business. In addition, Title VII and the ADA protect workers with caregiving responsibilities from discrimination based on sex, disability, or stereotypical assumptions related to these or other protected bases about the worker’s ability to perform. The ADEA prohibits discrimination, including but not limited to compensation discrimination, against people who are age 40 or older because of their age. GINA prohibits discrimination, included but not limited to compensation discrimination, on the basis of genetic information (including family medical history). The PWFA requires employers to provide reasonable accommodations to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. Each of the federal laws enforced by the EEOC protects workers from retaliation for reasonably opposing discrimination or for participating in a discrimination investigation or proceeding.

III. Exchange of Information

A. Information Sharing:

1. It is the parties’ view that sharing of information in cases of common legal interest is to the parties’ mutual benefit. WHD and the EEOC may share, whether upon request from the other agency or upon an agency’s own initiative, any information or data that supports the other agency’s enforcement activities, whether obtained in the course of an investigation or through any other sources, to the extent permitted by law. This may include complaint referrals and other sharing of information in complaint or investigative files relating to alleged violations of the laws enforced by WHD and the EEOC, reports filed or data produced by employers (e.g., EEO-1 Reports or FLSA records); and statistical analyses or summaries, in accordance with Section III.E. of this MOU and where not otherwise prohibited by law. The agencies will explore ways to efficiently facilitate such information and data sharing, particularly in the areas of: employment discrimination based on race, color, religion, sex, national origin, age (for those 40 and older), disability, or genetic information; unlawful compensation practices, such as

violations of minimum wage, overtime pay, or wage discrimination laws; working and living conditions of employees; denial of required break times or places for nursing mothers to express milk; unlawful retention of employees' tips; unlawful denial of family and medical leave and leave-related discrimination based on disability, pregnancy, or caregiving responsibilities; employment opportunities for individuals with disabilities; the identification and investigation of employment structures where employees have been misclassified as independent contractors and/or where joint employer liability may facilitate compliance and accountability under the law; and unlawful retaliation against workers who assert workplace rights, including retaliatory exploitation of immigration status to discourage workers from asserting their rights.

2. This MOU will be implemented in full compliance with the Privacy Act of 1974, the Freedom of Information Act (FOIA), the Federal Records Act, and any other applicable federal laws. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the FOIA, 5 U.S.C. § 552. Further information on how the agencies will handle FOIA requests from third parties is detailed in part E.4. below.
3. Requests for information under this section can be made by the following individuals:
 - (a) For DOL/WHHD
 - The Administrator
 - The Deputy Administrators
 - The Regional Administrators
 - The Associate Administrator for Regional Enforcement & Support
 - The Associate Administrator for Policy
 - The Associate Administrator for Enterprise Data & Analytics
 - The Regional Solicitors of Labor
 - The Associate Solicitor, Division of Fair Labor Standards
 - (b) For the EEOC
 - The Chair
 - A Commissioner
 - The General Counsel
 - The Deputy General Counsel
 - The Director of the Office of Field Programs
 - The Director of Field Management Programs
 - Any EEOC District Director, the Director of the Washington Field Office, or their designees
 - Any EEOC Regional Attorney or their designee
 - The EEOC MOU Coordinator

B. Points of Contact (POC) for Requests for Information and Responses:

1. Requests for information under this section should be directed to the following individuals:

- (a) WHD requests for information should usually be directed to the EEOC District Director, the Washington Field Office Director, or the Regional Attorney where WHD believes that the information is located. WHD requesting officials may also direct their requests for information to any of the EEOC officials listed in III.A.3(b) above with the exception of the Chair, a Commissioner, or the General Counsel. A list of EEOC Districts, along with their geographic boundaries and current District leadership, is attached hereto and can be found on the agency's website, www.eeoc.gov.
 - (b) EEOC requests for information should usually be directed to the WHD Regional Administrator in the region where the EEOC believes the information is located. EEOC requesting officials may also direct their requests for information to any of the DOL or WHD individuals listed in III.A.3(a) above with the exception of the Administrator. A list of WHD Regions, along with their geographic boundaries and current Region leadership is attached hereto and can be found on the agency's website, <https://www.dol.gov/agencies/whd>.
2. Responses to requests for information under this section should be directed to the following individuals:

WHD and EEOC responses to requests for information under this section shall be made to the official who requested the information. The responding agency will provide copies of the requested documents or make the requested documents available to the requesting agency for inspection and copying and/or loan within 10 days of receipt of the request, or as soon as practicable thereafter consistent with the availability of the responding agency's staff and other resources and the responding agency's own priorities.

- 3. Any transfer of information under this MOU shall only be made where not otherwise prohibited by law and in accordance with Section III.E. of this MOU. Information transferred between WHD and the EEOC under this MOU shall not be used by the receiving agency for purposes other than the enforcement of the laws enforced by the receiving agency.
- 4. This MOU does not prohibit the sharing of information between WHD and the EEOC by any means other than those identified in this section to the extent that such means are agreed to by both agencies and not prohibited by law.

C. Coordinated Investigations and Enforcement

- 1. When, during the course of an investigation, agency personnel have reason to believe that conduct may have occurred that the other agency could deem unlawful under its laws, the investigating agency personnel will advise the potential complainant or filing party that they may be able to file a charge or complaint with the other agency. Agency personnel also will provide the individual with informational materials prepared by the other

agency, which includes information about rights and remedies under the statutes enforced by the other agency, along with contact information for the other agency.

2. In appropriate cases, the agencies will determine whether to conduct coordinated investigations of matters arising within both agencies' jurisdictions. If the agencies decide to conduct coordinated investigations, and WHD finds a violation and the EEOC finds reasonable cause, they shall explore whether it is appropriate for one agency to settle or conciliate its matter while the other holds its matter in abeyance, considering under which statute it would be most feasible and practical to proceed.
 - a) If one agency holds its matter in abeyance, the other agency will consult with the former agency before settling or concluding conciliation of its own matter.
 - b) If the agencies decide not to hold either matter in abeyance, they shall explore with the complainant or charging party, respondent, and any other relevant party, whether they consent to publicize any possible resolution. If any such party declines to consent, WHD and the EEOC shall negotiate separate administrative settlements with the relevant parties where appropriate. In such instance, neither WHD's settlement nor its press release, if any, may make any mention of the Title VII, ADA, or GINA component of the coordinated investigation or of the EEOC, or disclose any information from which it may be inferred that there was an EEOC charge or investigation, unless the EEOC has already publicized the information; and neither the EEOC's settlement nor its press release, if any, may make any mention of the component of the coordinated investigation involving the laws that WHD enforces or of WHD, or disclose any information from which it may be inferred that there was a WHD investigation, unless WHD has already publicized the information.

D. Training and Outreach

1. Where the parties mutually determine it to be appropriate, WHD and the EEOC shall provide training to each agency's staff in identifying cases and issues that may arise under the other's jurisdiction; engage in joint outreach and public education; share or co-develop training materials and programs; or develop joint policy statements and technical assistance documents when appropriate. These activities will facilitate a greater understanding and awareness of the laws the agencies enforce relating to employment discrimination based on race, color, religion, sex, national origin, age (for those 40 and older), disability, or genetic information; compensation discrimination under the EPA and/or Title VII or the other EEO statutes; other unlawful compensation practices (such as violations of the FLSA, including minimum wage, overtime, Section 3(m), Section 7(r) and Section 14(c)); leave-related violations of the FMLA and/or Title VII or the ADA; and retaliation claims under each agency's respective authority. The agencies' training, outreach, and education efforts may include coordination on the experiences and enforcement perspectives of each agency in identifying and investigating employment structures where employees have been misclassified as independent contractors and/or where joint employer liability may facilitate compliance and accountability under the

law. The agencies may also meet periodically, and otherwise routinely share information, about their enforcement priorities and other identified employment trends.

2. All public materials bearing the EEOC name, logo, or seal must be approved in advance by EEOC. All public materials bearing the DOL/WHd name, logo, or seal must be approved in advance by DOL/WHd. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the party carrying out the activity do not necessarily represent the opinions, interpretation, or policy of the other partner.

E. Confidentiality and Disclosure

1. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under applicable federal statutes or laws, including sections 706(b) and 709(e) of Title VII (see E.2. below). 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 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 FOIA exemptions or legal privileges; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets. Unless noted otherwise in the transmission, confidential or privileged information that the supplying agency produces to the receiving agency is provided under the common interest doctrine. The sharing of information under this MOU shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure.
2. Sections 706(b) and 709(e) of Title VII prohibit the EEOC from disclosing to the public any information obtained by the Commission pursuant to its authority under the statute, such as EEO report data and any information related to a charge (including whether or not a charge has been filed). The ADA and GINA incorporate these provisions. When WHd receives information obtained by the EEOC which is subject to the confidentiality requirements of sections 706(b) and 709(e) of Title VII, or the ADA and GINA, WHd shall observe those requirements as would the EEOC, except in cases where WHd receives the same information from a source independent of the EEOC.
3. Confidential information obtained pursuant to this MOU or any process established to implement the MOU, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. The parties will take reasonable precautions to ensure that information is protected and used in compliance with applicable privacy laws, regulations, and policies, including but not limited to the requirements and prohibitions of the Privacy Act of 1974 regarding information about individuals that is contained in systems of records. Except as set forth in this MOU, such information may not be used or

disclosed by the receiving party for other federal governmental purposes outside of the MOU or any process established to implement the MOU, to other authorities, or to any third parties unless the receiving party confers with the supplying party, and the supplying party expressly approves such use or disclosure in writing, signed by the EEOC's Office of Legal Counsel or DOL's Office of the Solicitor.² The information shall not be disclosed to parties external to this agreement without a federal court order, a formal request from a federal oversight entity, or the supplying party's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act, the Trade Secrets Act, Sections 706(b) and 709(e) of Title VII, Section 107(a) of the ADA, and Section 207(a) of GINA. When responding to a federal court order, a receiving party shall notify and confer with the supplying party prior to duplicating or disclosing information.

4. If a party receives a FOIA request from a non-party to this MOU for records that originated with the other party, it typically will refer those records to the supplying party for a review and direct response to the requester under the FOIA. *See* 29 C.F.R. § 1610.7(e)(2); 29 C.F.R. § 70.20(d); Department of Justice, Office of Information Policy, *Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them*, available at <https://www.justice.gov/oip/blog/referrals-consultations-and-coordination-procedures-processing-records-when-another-agency>.
5. In the event that there is a public proceeding, such as a trial, in which records or testimony of the other agency may be used or will be sought, the party involved in the public proceeding shall notify the other agency.
6. Should either party receive a discovery request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the party receiving such a discovery 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 supplying party that such a request or subpoena has been received, so that the supplying party may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
7. 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.
8. The agencies will notify one another, through the agency POC identified in this MOU and with a copy to the EEOC's Director of the Office of Field Programs and the EEOC's Legal Counsel, 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 MOU.

² The term "supplying party" refers to the agency that originally owned the records and supplied them to the other agency pursuant to this MOU.

F. Information Security

1. All exchanges of information by electronic means must be secure, and methods shall be agreed to by the sending and receiving agencies. When sharing information electronically through an agency's secure data sharing service, the agencies agree to establish communication protocols and timelines for on- and off-boarding any required guest user accounts.
2. For information security purposes, information contained in physical files (such as paper-based documents and CDs) exchanged pursuant to this MOU remains the responsibility of the supplying 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 supplying agency if the information is not received as of the next business day following the agreed upon delivery date.
3. For information security purposes, after an agency receives information from the supplying agency, the supplying agency retains responsibility only for safeguarding its guest user accounts, and not for any security incidents, inadvertent disclosure, or the information technology safeguards in place for protecting that information by the agency that received it.
4. 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, the agency experiencing the incident or disaster will send formal written electronic notification to the supplying agency's designated contact person immediately if possible, and within no more than 3 days, after detection of the incident or disaster. The designated contact person for the EEOC is the EEOC Chief Information Security Officer, and the designated contact person for WHD is the WHD Administrative Officer. The written electronic notification will describe the security incident or disaster in detail, including what data exchanged pursuant to this MOU may have been inadvertently disclosed.
5. At the conclusion of an investigation or litigation by either party, the receiving agency will return all confidential information provided in physical files to the supplying agency, and will permanently destroy any confidential information shared electronically, except as required by law, including the Federal Records Act.

IV. Resource Provisions

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities. This agreement does not itself 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. This MOU does not prohibit or otherwise govern agreements between the agencies on matters not addressed herein.

V. Totality and Entire Agreement

Except as expressly provided in this MOU, this MOU constitutes the entire agreement between WHD and the EEOC with respect to the matters set forth herein.

VI. Effective Date

This MOU will take effect immediately upon signature by both parties and will remain in effect until terminated by the parties. This MOU may be modified in writing by mutual consent of both agencies. The parties will review this MOU quarterly to determine whether the provisions of this MOU require amendment or revision. This MOU may be terminated by either party upon 90 days written notice to the other agency. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.

This MOU is executed as of the _____ day of _____, 202__.

The following officials agree to the terms and conditions of this MOU:

For the Equal Employment Opportunity Commission:

Chair, U.S. Equal Employment Opportunity Commission

Date _____

For the Wage and Hour Division:

Principal Deputy Administrator, Wage and Hour Division
U.S. Department of Labor

Date _____