

**AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND
HOUR DIVISION AND
TENNESSEE BUREAU OF WORKERS' COMPENSATION**

This Agreement is made and entered into this 12th day of January 2017, by and between The United States Department of Labor's Wage and Hour Division (hereinafter referred to as "WHD" or "Department") and the Tennessee Bureau of Workers' Compensation (hereinafter referred to as "Bureau"), together collectively referred to herein as "the agencies" or "the parties".

WHEREAS, in connection with such enforcement, the parties' areas of jurisdiction and activities may overlap, making it desirable for the parties to share resources and enhance one another's enforcement of the law by sharing information and/or conducting coordinated investigations consistent with applicable law; and

WHEREAS, the parties also share the specific and mutual goals of providing clear, accurate, and easy-to-access information to employers, employees, and other stakeholders; and

WHEREAS, the parties desire to enter into this Agreement to set forth the terms of this partnership in furtherance of these mutual interests and goals.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose of Agreement

The agencies recognize the value of establishing a collaborative relationship to promote compliance with state and federal laws addressing areas of common concern among the regulated community in the State of Tennessee. The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, to protect the right of America's workforce to be employed in a manner that is compliant with laws and regulations governing employment status, payment of wages, hours of work, safety and health, and unemployment and workers' compensation insurance, and to conduct coordinated investigations and share 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. WHD enters into this agreement pursuant to its statutory authority under 29 U.S.C. § 211(b). The Tennessee Bureau of Workers' Compensation is responsible for enforcement of the worker's compensation laws of the State of Tennessee through the administration of its programs.

Nothing in this agreement should be read to limit the parties' enforcement of these and other laws.

Contacts

The parties will designate a Point of Contact responsible for coordinating the partnership activities. Information regarding the contact person, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the agreement and at the time that the identity of the contact person changes. The parties will also designate a representative to meet each quarter either in person, by teleconference, or other electronic means with their counterpart in the other agency to review areas of common legal interest and the terms and conditions of the partnership. Information regarding the representative, including name, title, address, phone and email address, will be shared between the parties at the time of execution of the agreement and at the time that the identity of the representative changes.

1. The Points of Contact will designate local contacts so that partnership activities as described herein may take place between district offices. Each point of contact will provide to the other, a listing of local contacts' name, title, address, phone number, email address, and the Tennessee State counties, which comprise a district office's territory. Contacts will update the listing as needed. The Points of Contact will monitor partnership activities, maintain statistical information on partnership activities and provide criteria for carrying out partnership activities.
2. Local contacts will be responsible for coordinating enforcement activities, data sharing, and exchange of information as necessary.

Enforcement and Data Sharing

1. Where the parties mutually determine it to be appropriate and allowable under law, the parties may:

- a. Coordinate investigations and other enforcement activities in the State of Tennessee to assist each other with enforcement or investigate cases jointly, based on the employer's business operations, in designated priority industries, for areas of mutual concern, or on cases involving overlapping jurisdiction.
- b. Make referrals to one another of complaints or potential violations of laws over which the other party has jurisdiction or expertise, such as certain worker's compensation violations that fall under the Bureau.
- c. Accept referrals from one another of complaints or potential violations of laws over which the other party has jurisdiction.
- d. Provide information regarding settlements or other dispositions of cases to the other party in a mutually agreed upon format so that appropriate follow-up may take place.
- e. Cooperate and coordinate with one another in criminal investigations subject to overlapping jurisdiction.
- f. Cooperate to the extent possible in providing testimony to support exchanged information which becomes the subject of administrative or criminal proceedings consistent with the Exchange of Information Section of this Agreement.
- g. Notify each other of any requests for information affecting shared data under Freedom of Information laws so that the parties may affect shared data consistent with Exchange of Information Section of this Agreement.
- h. WHD will send any information, data, and materials subject to this Agreement to Bureau at the following address:

Tennessee Bureau of Worker's Compensation
220 French Landing Drive 1-B
Tennessee Department of Labor
Nashville, TN 37243-1002
- i. Bureau will send any information, data, and materials subject to this Agreement to WHD at the following address:

Wage and Hour Division
Nashville District Office
1321 Murfreesboro Road, Suite 204
Nashville, TN 37217

Effect of Agreement

- l 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 agreement containing financial obligations. Nothing contained in this agreement shall constitute a debt owed by the State of Tennessee.

- 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. Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- 3 This agreement contains all the terms and conditions agreed upon between the parties 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 parties. This agreement is not intended to confer any right upon any private person or other third party.
- 4 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 arrangements with other entities.
- 5 This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal and Tennessee state laws.

Exchange of Information

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

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

1. The parties 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 contacts may establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent practicable and allowable by law and policy.
3. The parties may be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
4. The agencies may exchange aggregate statistical information on incidence of violations in specific industries and geographic areas, where available and to the extent practicable and allowable by law and policy.
5. Exchange of information to one another pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552, or the laws governing

the release of public records in the State of Tennessee. The Bureau maintains confidentiality in accordance with the laws of the State of Tennessee.

6. 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 or regulations. Confidential information includes: the identity of persons who have given information to the parties 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 and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors, policy statements, memoranda, and recommendations of federal or state employees, including (but not limited to) any records that would otherwise not be subject to disclosure under law as non-final, intra-agency or inter-agency documents; 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.
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(j), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
8. 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 consent or authority of the agency providing the information (hereinafter the “donor agency”) or a court order.
9. In addition to the requirements above, Confidential Unemployment Compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603 and T.C.A. Section 25-11-11 and 25-4-116 of Tennessee Labor Law.
10. The parties will notify one another, through the agency point of contact 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.
11. 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.
12. 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. 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 or electronic notification to the donor agency's designated contact person immediately after detention 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.

13. Liability of the U.S. Government is governed by the Federal Torts Claims Act.
14. The parties agree that they may exchange referrals regarding alleged violations where there are misclassified workers; and any other relevant information where appropriate.

Dissemination of Factual Information

1. The agencies agree to jointly disseminate outreach materials to the regulated community when appropriate. Any such dissemination may not be undertaken without prior notice of each party.
2. All public materials bearing the United States Department of Labor ("DOL") or WHD name, logo, or seal must be approved in advance by DOL. All public materials bearing Bureau name, logo, or seal must be approved in advance by Bureau. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner. Any such materials shall acknowledge the support of Bureau, the State of Tennessee, the United States Department of Labor, WHD, and, if funded with other federal funds, the applicable federal funding agency.

Resolution of Disagreements

Disputes arising under this Agreement will be resolved informally by discussions between appropriate Agency officials and staff upon request for such discussion made between the agency Points of Contact.

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 termination. Renewal of the agreement may be accomplished by written agreement of the parties.


Provisions related to the confidentiality and handling of information exchanged pursuant to this agreement shall survive the termination of this agreement.

This agreement is executed as of the 17th day of January 2017.

United States Department of Labor
Wage and Hour Division

Tennessee Bureau of Workers'
Compensation

By: 
David Weil
Administrator

By: 
Abigail Hudgens
Administrator

By: 
Wayne Kotowski
Southeast Regional Administrator