

**PARTNERSHIP AGREEMENT**

**BETWEEN**

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

**AND**

Labor Bureau of the New York State Office of Attorney General

**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 provide in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this agreement limits the WHD's enforcement of these and other statutes. WHD enters into this agreement pursuant to its statutory authority under 29 U.S.C § 211 (b).**

**As head of the Department of Law, the Office of Attorney General of the State of New York serves as the guardian of the legal rights of the citizens of New York and serves all New Yorkers in numerous matters affecting their daily lives. Among other duties, the OAG Labor Bureau investigates violations of minimum wage, overtime, prevailing wages, and other basic federal and state labor laws throughout the state, and brings civil and criminal prosecutions against employers who have violated these laws. Nothing in this agreement limits the OAG Labor Bureau's enforcement of these and other statutes.**

## PARTNERSHIP AGREEMENT

BETWEEN

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

AND

Labor Bureau of the New York State Office of Attorney General

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 Labor Bureau of the Office of Attorney General (OAG) of the State of New York (hereinafter referred to as "OAG Labor Bureau"), together collectively referred to as "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 State of New York. 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 conduct coordinated investigations and share information as appropriate towards the goal of protecting the wages, safety, and health of America's workforce.

### 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. Nothing in this agreement limits the WHD's enforcement of these and other statutes. WHD enters into this agreement pursuant to its statutory authority under 29 U.S.C. § 211(b).

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who have violated these laws. Nothing in this agreement limits the OAG Labor Bureau's enforcement of these and other statutes.

### Contacts

- The agencies will designate a contact person responsible for coordinating the partnership activities.
- 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,

- The agencies may conduct joint (affirmative, as appropriate) investigations periodically involving potential violations occurring within the State of New York, if opportunity provides.
- The agencies will assist each other with enforcement.
- The agencies will make referrals of potential violations of each other's statutes.

### Effect of Agreement

- 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.
- 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 functions.
- 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.
- 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.
- This agreement will be executed in full compliance with the Privacy Act of 1974 and the New York Freedom of Information Law, and any other applicable federal and New York state laws.

### Exchange of Information

- It is the policy of WHD and OAG Labor Bureau to cooperate with other government agencies where appropriate, subject to the general limitation that any such cooperation must

be consistent with the statutory obligations and enforcement efforts of the WHD and of the OAG Labor Bureau. It is WHD's and OAG Labor Bureau's view that an exchange of information in cases in which both entities are proceeding on the same, overlapping, or similar matters is to our mutual benefit. There is a need for WHD and OAG Labor Bureau to provide information to other law enforcement bodies without making a public disclosure.

- 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 the New York Freedom of Information Law.
- Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. See, e.g., 18 U.S.C. 1905 (Trade Secrets Act) and 5 U.S.C. 552a (Privacy Act of 1974). 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 and OAG Labor Bureau's 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) 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 on living persons; individually identifiable health information, and confidential business information and trade secrets.
- When confidential information is exchanged it shall be accessed and used by the recipient party solely for the limited purposes of carrying out specific (affirmative, as appropriate) enforcement activities pursuant to this agreement as described herein, and in no event shall such information be disclosed by the recipient party without the written authority of the agency providing the information (hereinafter the "donor agency") or a court order.
- The parties will notify one another 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 subject to the limitations in the preceding paragraph.
- 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.
- 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 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.

Subject to the foregoing constraints:

- The agencies agree to exchange information on laws and regulations of common concern to the agencies in order to advance their (affirmative, as appropriate) enforcement agenda, consistent with applicable law, to the extent practicable and appropriate.
- Where appropriate, the agencies will exchange investigative leads, complaints, referrals of possible violations, and case-related documents, to the extent allowable by law and policy.
- The agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographic areas, if possible, to the extent such statistical information readily exists within the agency's records.

#### **Outreach and Education**

- When appropriate and feasible, the agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications of common concern for the regulated community.
- The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
- All materials bearing the United States Department of Labor ("DOL") or WHD name, logo, or seal must be approved in advance by DOL. All materials bearing the OAG name, logo, or seal must be approved in advance by the OAG.

#### **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.

**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 cancellation. 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 effective as of the 18<sup>th</sup> day of November, 2013.

United States Department of Labor  
Wage and Hour Division

New York Office of Attorney General  
Labor Bureau

By: Laura Fortman  
Laura Fortman  
Principal Deputy Administrator

By: Terri Gerstein  
Terri Gerstein  
Labor Bureau Chief

*Small Business  
Benefit*

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE INTERNAL REVENUE SERVICE  
AND  
THE US DEPARTMENT OF LABOR**

**1. INTRODUCTION:**

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the United States Department of Labor (DOL) sets forth the agreement of the parties with respect to a joint initiative to improve compliance with laws and regulations administered by the IRS and DOL. This will be accomplished through enhanced information sharing and other collaboration. A joint IRS-DOL team will lead this initiative.

**2. AUTHORITY:**

This MOU is entered into between the IRS and the DOL pursuant to Internal Revenue Code Section 7602(a)(1), 29 U.S.C. § 551, 29 U.S.C. § 1136(a), and 44 U.S.C. § 3510.

**3. PURPOSE:**

A. The sharing of information and collaboration between the parties will help reduce the incidence of misclassification of employees as independent contractors, help reduce the tax gap, and improve compliance with federal labor laws. Increased collaboration will also strengthen the relationship between the IRS and DOL, 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. This multi-agency approach presents a united compliance front to employers and their representatives.

B. Specific objectives of this initiative include the following:

- Expand the IRS-DOL partnership launched in the Questionable Employment Tax Practices program
- Reduce the employment tax portion of the tax gap
- Increase compliance with federal employment and unemployment tax requirements
- Increase compliance with federal labor laws enforced by the DOL
- Reduce fraudulent filings
- Reduce abusive employment/unemployment tax schemes
- Reduce worker misclassification
- Reduce questionable employment tax practices
- Work together to create educational and outreach materials and guidance for employers and workers

**4. CONTACTS:**

Contacts for the purpose of this MOU will be the IRS Small Business/Self Employed Division designee, the IRS Governmental Liaison designee, the IRS Disclosure Office Designee, and the DOL designee (see Attachment I).

## **5. JOINT OUTREACH:**

The parties to this agreement will coordinate national outreach activities relating to worker classification and other issues of mutual interest. These include, but are not limited to, joint national press releases, joint messages to national stakeholder organizations, and other education/outreach efforts.

## **6. DUTIES AND RESPONSIBILITIES OF THE IRS-DOLTEAM:**

The team is comprised of representatives from the IRS and DOL.

A. The members of the team will meet on a regular basis to discuss issues of concern, review MOU actions, and make recommendations for improvement in partnership activities. The team will monitor trends and developing issues.

B. The team will create processes with all stakeholders in mind. Recommendations will focus on educating taxpayers/employers, promoting fairness and improved compliance, and creating a level playing field for law-abiding taxpayers and employers.

## **7. DUTIES AND RESPONSIBILITIES OF THE DOL:**

A. The DOL will refer to the IRS, at DOL's discretion and consistent with applicable law, Wage and Hour Division investigation information and other data that DOL believes may raise Internal Revenue employment tax compliance issues related to misclassification.

B. The DOL will share DOL Wage and Hour Division training materials and opportunities with the IRS to the extent possible.

C. The DOL will participate in joint outreach events with the IRS to the extent possible.

## **8. DUTIES AND RESPONSIBILITIES OF THE IRS:**

A. The IRS will evaluate and classify employment tax referrals provided by the DOL and at the IRS's discretion, conduct examinations to determine compliance with employment tax laws.

B. The IRS will, at its discretion and consistent with applicable federal laws, share the employment tax referrals provided by the DOL with the state and municipal taxing agencies that are authorized to receive tax return information under approved agreements with the IRS.

C. The IRS will provide annual reports to the DOL summarizing the results achieved by using DOL 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.

D. The IRS will share employment tax training materials and opportunities with the DOL to the extent possible.



E. The IRS will participate in joint outreach events with the DOL to the extent possible.

F. The IRS will annually provide the DOL with aggregate data relating to trends in misclassification. The IRS will not share confidential Federal Tax Information with DOL unless disclosure is authorized by 26 U.S.C. § 6103.

G. The IRS will, at its discretion and pursuant to 26 U.S.C. § 6103(i)(3)(A)(i), provide DOL with information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) that the DOL enforces.

**DISCLOSURE, SAFEGUARDS, AND RECORD KEEPING REQUIREMENTS:**

9. It is the policy of DOL to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with the DOL's statutory obligations and enforcement efforts. It is the DOL's view that an exchange of information in cases in which both entities are proceeding on related matters is to our mutual benefit. There is a need for the government to provide information to other law enforcement bodies without making a public disclosure.

Accordingly, the parties intend to pursue their common interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to his MOU. Further:

- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- When confidential information is exchanged, the receiving party shall use and access it only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The receiving party shall also comply with the requirements of the Trade Secrets Act, 18 U.S.C. § 1905, the Privacy Act, 5 U.S.C. § 552a, and the Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, or any other laws and regulations to the extent that they apply to confidential information.
- 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 DOL enforcement files that were obtained under such conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by, but not limited to, the attorney-client privilege and the protections against disclosure of attorney-work-product product and the deliberative process, investigative files, confidential informants, and confidentiality agreements and orders that may apply to shared information; personal information on living persons; individually identifiable health information, confidential business information and trade secrets, and any other information so labeled by the parties. Such information will remain confidential and subject to the privileges and protections of this MOU notwithstanding its termination.

- In the event that there is a judicial proceeding brought by the employer after an IRS examination based on information from a DOL referral, the IRS will, when possible, provide DOL with a copy of the filed complaint or petition. If records in DOL's possession are relevant and necessary for use in the proceeding, the IRS will follow DOL's *Touhy* regulations, 29 CFR Part 2, Subpart C, if the IRS seeks DOL records, or testimony from DOL's employees.

**10. TRANSMITTAL PROCEDURES:**

A. Transmissions from DOL to IRS:

- At its discretion, the DOL will send any information, data, and materials subject to this MOU to the IRS at the following address:  
IRS  
Employment /Excise Tax  
Stop 5702A  
Covington, KY 41011
- All information exchanged will include a Document Transmittal (IRS Form 3210 or equivalent) or other means of verifying receipt, with a count of documents by type and a brief description of the information being provided.
- The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

B. Transmissions from IRS to DOL:

- At its discretion, IRS will send any information, data, and materials subject to this MOU to the DOL designees (See Attachment I).

**\* 11. LIABILITY:**

The liability of IRS and the DOL is governed by the Federal Tort Claims Act [28 U.S.C. § 1346(b), 2672, et seq.], or other applicable federal statutory authority.

**12. THIRD PARTY RIGHTS:**

This MOU does not confer any rights or benefits on any third party.

immigration status

**13. PRIVACY:**

The IRS and DOL will assure the integrity and accuracy of personal and financial data as required by the relevant section of the Privacy Act of 1974, 5 U.S.C. § 552a and the Right to Financial Privacy Act, 12 U.S.C. § 3401, et seq. The IRS and DOL will perform their duties in a manner that recognizes and enhances individuals' rights of privacy and will make certain that their activities are consistent with applicable laws, regulations, and sound administrative practices and procedures.

**14. EFFECTIVE DATE:**

The effective date of this MOU is the date it has been signed by all parties to the agreement.

**15. AMENDMENT OF MOU:**

This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by authorized representatives of the IRS and DOL.

**16. TERMINATION OF MOU:**

This MOU may be cancelled upon thirty days written notice by either the IRS or the DOL or immediately by signed agreement of the IRS and the DOL.

**17. LIMITATIONS:**

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this MOU which conflicts with federal law will be null and void.

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 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.

Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out its statutory and regulatory duties, or other current or future agreements between DOL or its component agencies and the IRS. This agreement also does not limit or restrict the parties from participating in similar activities or arrangement with other entities.


Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.

**18. EVALUATION OF DATA EXCHANGE:**

The IRS and DOL will review this MOU annually (or more frequently as necessary) to evaluate the existing data exchange, examine the continuing needs for a data exchange, to discuss the utility of categories of data heretofore exchanged, and determine whether the provisions of this agreement require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison Office, Office of Safeguards, Business Operating Division, and the DOL designees.

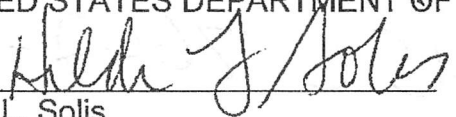
**APPROVALS:**

INTERNAL REVENUE SERVICE

By:   
Douglas M. Shulman  
Commissioner of Internal Revenue

September 19, 2011

UNITED STATES DEPARTMENT OF LABOR

By:   
Hilda L. Solis  
Secretary of Labor

September 19, 2011