MEMORANDUM OF UNDERSTANDING

BETWEEN

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

AND

UTAH DEPARTMENT OF WORKFORCE SERVICES

FOR AN

EMPLOYER INFORMATION EXCHANGE

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 Utah Department of Workforce Services (hereinafter referred to as "DWS"), together 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 sharing information consistent with applicable laws, the parties enter into this agreement.

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 among the regulated community in the State of Utah. The agencies will work together to more effectively and efficiently communicate and cooperate on areas of common interest toward the goal of protecting the wages, safety, and health of America's workforce and to share information as appropriate.

Legal Authority

DWS is authorized to enter into this MOU concerning the exchange of private information with WHD pursuant to the provisions of Utah Code Ann. §35A-4-312(5)(p); the Utah Government Records Access and Management Act, Utah Code Ann. §63G-2-206(2); and the rules adopted pursuant thereto.

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 law. Nothing in this agreement limits the WHD's enforcement of these and other statutes.

DWS is responsible for administering and enforcing the state Unemployment Insurance program, among other programs.

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.

DWS Contact:
Michelle Beebe
Director, Unemployment Insurance
Department of Workforce Services
140 E 300 S
Salt Lake City, UT 84111
Phone: 801 526-9575
Email: mbeebe@utah.gov

WHD Contact:
Joseph Doolin
District Director
USDOL Wage and Hour Division
60 E South Temple, Suite 575
Salt Lake City, UT 84111
Phone: 801 257-6565
Email: doolin.joseph@dol.gov

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 obligations.

2. DWS may share employer name and identifying information, the total number of misclassified workers, and the aggregate amount of misclassified wages of employers that are found to have misclassified workers (hereinafter referred to as "DWS data").

3. WHD may share name and identifying information of employers that are suspected of violating wage and hour regulations found to have misclassified workers.

4. If it is found that the information shared is not mutually beneficial, the parties will not share information.

5. 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.

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

7. 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.

8. 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.

9. This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, the Utah Government Records Access and Management Act, and any other applicable federal and Utah 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 may be necessary, from time to time, to exchange information, some of which may be considered confidential. It is the policy 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 parties are proceeding with legal interest is to their mutual benefit. The parties to the Agreement 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.

- 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 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 other party.

- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state and federal statures or law. 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, 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- 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.

- In the event that there is a public proceeding, such as a trial, in which WHD information may be used or testimony of WHD's employees sought, the WHD requires that DWS notifies WHD.

- Ifinformation is shared electronically, WHD will have whole disk encryption on computers used for accessing or storing reports from the data and limit access to its information using appropriate security controls in accordance with the most recent NIST 800-53 guidelines in transmitting, encrypting, storing, and maintaining data: http://www.nist.gov/publication-portal.cfm.

- 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 agency expecting to receive the information electronically will notify the donor agency if the information is not received the next business day.

- Parties shall train authorized users accessing information under this MOU, on relevant statutes prescribing confidentiality and safeguarding requirements, disclosure prohibitions and penalties for unauthorized access or disclosure, including the provisions of Sections 35A-4-301 2(7), 63G-2-801(l)(a) and 63G-2-801(2)(a) of the Utah Code . Parties shall have the right to review disclosure training and request or suggest any changes necessary.

- Parties shall permit each other and any federal agency with statutory oversight responsibility for the

data being shared the right to make on-site inspections or compliance reviews to ensure that the provisions of the agreement are upheld and federal statutes and regulations are being met. Parties will further maintain a system sufficient to allow an audit of its compliance witb the disclosure and confidentiality and access to data provisions above.

- 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, to the extent practicable.
- DWS will share employers' information in accordance with their state laws, specifically Utah Code Ann. 35A-4-312(5) and the corresponding administrative rules.
- Employers not subject to the Utah Workforce Services Code Employment Security Act (Title 35A Chapter 4) will not be included DWS's referrals to WHD.
- DWS may use WHD division information to conduct targeted investigations for possible violation of unemployment compensation laws.
- WHD will comply with any other requirements specified in Employment Security Act 35A-4-312 or Utah Administrative Code R994-312. However, liability of the U.S. Government is governed by the Federal Torts Claims Act.
- WHD may use DWS data to conduct targeted investigations for possible violation of other labor laws (such as child labor, uncompensated overtime, and failure to pay minimum wage), \
- WHD will not share DWS data with any other entity, including another division or department of the federal government. This does not preclude WHD from sharing results of its own investigative findings with these other entities.
- DWS is required to submit an annual report to the Utah State Legislature regarding the benefit to the state from disclosure of information to WHD, pursuant to Utah Code Ann. 35A-4-312(5)(p)(iii). WHD may provide DWS with supporting information as requested regarding the effectiveness of this agreement.

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 or the date established under Utah Code 631.1-235(1), whichever is sooner. 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.

Indemnity

- DWS is a governmental entity as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-l01 et. seq.). Nothing in this Contract shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this Contract be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.

This agreement is executed as of the 7th day of July, 2016.

United States Department of Labor
Wage and Hour Division

By: _____
Dr. David Weil
Administrator

By: _____
Betty Campbell
Southwest Regional Administrator

Utah Department of Workforce Services

By: _____
Jon Pierpont
Executive Director