

COMMON INTEREST AGREEMENT

BETWEEN

PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR

AND

PARTICIPATING AGENCIES OF THE COMMONWEALTH OF MASSACHUSETTS

This Agreement is made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the “Department”), and participating agencies of the Commonwealth of Massachusetts, specifically, the Executive Office of Labor and Workforce Development, the Office of the Attorney General, the Department of Revenue, the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, the Massachusetts Commission Against Discrimination, the Alcoholic Beverages Control Commission, the Division of Banks, the Department of Public Safety, the Division of Capital Asset Management, and the Division of Professional Licensure (hereinafter collectively referred to as “The Commonwealth”). The Department and the Commonwealth are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers' compensation entitlements, safety, and health of America's workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

Agency Responsibilities

The Department is responsible for administering and enforcing a wide range of federal 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, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department's enforcement of these and other laws.

The Commonwealth is responsible for:

Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- According to E.O. 499, JTF coordinates joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.
- According to E.O. 499, in fulfilling its mission, JTF:
 - Facilitates timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
 - Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
 - Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
 - Encourages businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
 - Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate;
 - Works cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee

misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;

- Works cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- Identifies potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- Consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Attorney General's Office, Fair Labor Division (AGO-FLD)

- The AGO-FLD enforces the Commonwealth's wage and hour laws, both criminally and civilly, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws.
- The AGO-FLD also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts.
- In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, AGO-FLD works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights.

Department of Unemployment Assistance (DUA)

- The DUA administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries. Employers pay quarterly contributions to the Massachusetts DUA.

Department of Industrial Accidents (DIA)

- Pursuant to M.G.L. Chapter 152, the mission of the DIA is to administer the Commonwealth's Workers' Compensation system and provide prompt and fair compensation to victims of occupational injuries and illness, and to see that medical

treatment to injured workers is provided in a timely manner while balancing the needs of employers to contain workers' compensation insurance costs. Additionally, DIA provides dispute resolution of workers' compensation cases through due process and adjudication and administers the Special, Private and Public Trust Funds.

Department of Revenue (DOR)

- The mission of DOR is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. DOR is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. DOR is also committed to the objectives of JTF to enforce employee classification laws through increased public awareness and enforcement.

Division of Banks (DOB)

- The mission of DOB is to ensure a sound, competitive, and accessible banking and financial services environment. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies.

Department of Labor Standards (DLS)

- DLS is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers by means of education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs:
 - Division of Apprentice Training
 - Prevailing Wage Program
 - Minimum Wage Program
 - Employment Agency Program
 - On-site Consultation Program
 - Asbestos Program
 - Lead Program
 - Occupational Lead Poisoning Registry
 - MA Workplace Safety & Health Program
 - Occupational Safety & Health Statistics Program
 - Industrial Hygiene Laboratory
 - Mine Safety and Health Program

Division of Capital Asset Management (DCAM)

- DCAM is charged with providing professional and comprehensive services to state agencies in the field of public-building design, construction, maintenance and real estate. DCAM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition, and maintenance.

Alcoholic Beverages Control Commission (ABCC)

- ABCC regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers and brokers. ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry.

Massachusetts Commission Against Discrimination (MCAD)

- MCAD is responsible for enforcing Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public.
- The Legislature has afforded MCAD with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens.

Division of Professional Licensure (DPL)

- DPL, under the Office of Consumer Affairs and Business Regulation (OCABR), oversees the state's 29 Boards of Registration, and regulates more than 40 trades and professions.
- Its mission is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair enforcements of statutes and regulations of the boards of registration. Each board can revoke or suspend a license after investigation of serious complaints.

Department of Public Safety (DPS)

- The Department of Public Safety is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The DPS licenses individuals in many areas, including elevator

mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinklerfitters, pipefitters, refrigeration technicians, and hoisting operators.

Contacts

- Each participating agency will designate a contact person responsible for coordinating activities covered under this Agreement.
- Each participating agency will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The participating agencies will make referrals of potential violations of each other's laws.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating 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 or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies 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 any other applicable federal laws and laws of the Commonwealth.

Exchange of Information

- The Department and the Commonwealth endeavor 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 each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information – including certain documents, factual materials, mental impressions, memoranda, interview reports, research and other information, some of which may be privileged – in cases of common interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal laws, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: 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 any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- 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.
- Acknowledging that privileges and protections (including without limitation the investigative files privilege, informant's privilege, attorney-client privilege, work product doctrine, deliberative process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Court order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.

- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to non-criminal justice agencies.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this 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, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- 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.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement or other means of disposition.
- 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 other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.

Subject to the foregoing constraints:

- The participating agencies agree to exchange information on laws and regulations of common concern to the other participating agencies, as requested and to the extent practicable and allowable by law and policy.
- The participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.
- The participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between participating agency Points of Contact, or other officials designated by a participating agency.


Period of Agreement


- This Agreement becomes effective upon the signing by all participating agencies, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all participating agencies. Any participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all participating agencies.

This agreement is executed as of the 19th day of September, 2011.

United States Department of Labor
Wage and Hour Division

Commonwealth of Massachusetts
Executive Office of Labor and Workforce Development

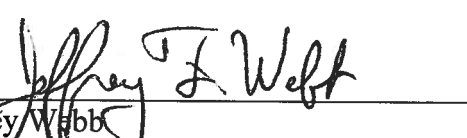
By: 
Nancy J. Leppink
Deputy Administrator

By: 
Joanne F. Goldstein
Secretary

United States Department of Labor
Occupational Safety and Health
Administration

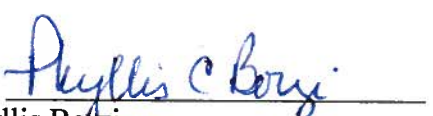
Commonwealth of Massachusetts
Office of the Attorney General


By: 
Jordan Barab
Deputy Assistant Secretary

By: 
Jeffrey J. Webb
Chief, Fair Labor Division
(on behalf of Massachusetts Attorney General Martha Coakley)

United States Department of Labor
Employee Benefits and Safety
Administration

Commonwealth of Massachusetts
Department of Revenue

By: 
Phyllis Borzi
Assistant Secretary

By: 
Navjeet K. Bal
Commissioner

United States Department of Labor
Office of Federal Contract Compliance
Programs

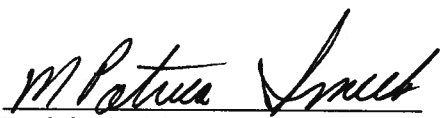
Commonwealth of Massachusetts
Department of Unemployment Assistance

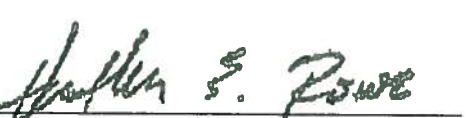
By: _____
Les Jin
Deputy Director

By: _____
Judi Cicatiello
Director

United States Department of Labor
Office of the Solicitor

Commonwealth of Massachusetts
Department of Labor Standards

By: 
M. Patricia Smith
Solicitor of Labor

By: 
Heather S. Rowe
Director

Appendix A

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
 - Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
 - Confidential tax information in all files or systems must be maintained only for as long as it is relevant or useful for the purposes of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 93I; and the Massachusetts Statewide Records Retention Schedule must be followed.
 - Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
 - Access to confidential information may not be released to any third party without DOR's written approval.
 - DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
 - DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.

- In accordance with M.G.L. c.151:
 - Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
 - Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
 - Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
 - Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.
- In accordance with M.G.L. c.93H, agencies shall safeguard personal information of residents of the Commonwealth.