

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
AND
REGIONS 7 AND 18 OF THE
NATIONAL LABOR RELATIONS BOARD**

Purpose

This Memorandum of Understanding (MOU) is entered into between the State of Michigan's Department of Attorney General (DAG), and Regions 7 and 18 of the National Labor Relations Board (NLRB) (collectively referred to as the "parties").

As Michigan's chief law enforcement office, the DAG protects and serves the people and interests of Michigan through a broad range of duties, including investigating violations of state labor, tax, and workers' compensation laws, and pursuing civil and criminal prosecutions against employers who have violated these laws.

The NLRB is responsible for enforcing the National Labor Relations Act (NLRA), which guarantees the rights of employees to join to improve their wages and working conditions, to organize a union and bargain collectively, and to engage in other protected concerted activity. The NLRB's primary function is to prevent and remedy unfair labor practices and to conduct employee elections to determine whether they wish to be represented by a labor organization.

The purpose of this MOU is to maximize and improve the enforcement of the laws administered and enforced by the parties through information sharing and advance each of the parties' enforcement initiatives and objectives. Among other items, this MOU sets forth the information handling and security requirements necessary to protect the confidentiality, integrity, and availability of confidential information shared under this MOU, and details referrals of potential statutory violations between the parties.

Agreement Period

This MOU is in full force and effect from August 5, 2024, through August 5, 2025.

Agreements

The parties will work together to enforce laws relating to misclassification of workers as independent contractors, better root out financial practices that harm workers, protect workers who have been harmed or may be at risk of being harmed as a result of interference with the right of workers to obtain fair market

compensation and freely exercise their legal rights under the laws, protect workers and promote fair competition in labor markets, better root out practices that harm workers in the “gig economy,” protect workers from retaliation when they exercise their rights, identify and prosecute labor traffickers, and address other issues that impact the legal protections of Michigan workers. To this end, the parties agree to the following:

A. Information Sharing

1. The DAG and NLRB may share any information or data that supports each party’s enforcement mandates, whether obtained during an investigation or through any other source to the extent permitted by law or policy. This includes complaint referrals and other information in complaint or investigative files relating to alleged violations of the laws enforced by the DAG, and the NLRB.
2. The parties will explore ways to efficiently systematize procedures to facilitate such information and share data on laws and regulations of common concern to the parties, to the extent practicable, including the establishment of a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law or policy.
3. This MOU will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable state and federal laws. Exchanges of information between the parties pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 USC § 552, or the Michigan Freedom of Information Act, MCL 15.231, et seq.
4. Requests for information and responses to such requests should be directed to the DAG’s and NLRB’s Point(s) of Contact (DAG or NLRB POC), as may be applicable:
 - (a) DAG requests for information under this section should be directed to either the Region 7 or Region 18 Regional Director, or their designees, based on where the DAG believes that the information is located, with such individual(s) serving as the NLRB POC.
 - (b) NLRB requests for information under this section should usually be directed to Debbie Taylor, Labor Division Chief at the Department of Attorney General, or Debbie Taylor’s

designee, who shall serve as the DAG POC.

(c) DAG and NLRB responses to requests for information shall be made to the POC who requested the information.

5. With respect to requests for information, the responding party will, if it determines sharing is appropriate, provide copies of the requested documents or make the requested documents available to the requesting party for inspection and copying and/or loan within ten (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.
6. Any transfer of information between the DAG and the NLRB under this MOU shall not be used by the receiving party for purposes other than the enforcement of applicable law(s) by the receiving party, or for any other permissible purpose(s) identified in this MOU.
7. This MOU does not prohibit the sharing of information between the DAG and NLRB by any means other than those identified in this MOU to the extent that such means are agreed to by the parties and not prohibited by law.
8. The parties agree to be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise.

B. Monthly Meetings

The parties shall meet monthly during the first week of each month, or at an alternate date agreed to by the parties. Monthly meetings shall take place through a virtual format. The parties shall alternate each month making meeting arrangements, i.e., arranging a meeting location or sending out a virtual meeting invitation, and preparing an agenda of meeting topics to be discussed. At the close of each monthly meeting, the date and time for the successive monthly meeting shall be discussed. Monthly meetings shall include discussion of various items, including but not limited to information sharing, current areas of common concern, legal theories being advanced by each party, enforcement initiatives and objectives, and areas where the parties can expand this partnership.

Upon mutual agreement, the parties may:

1. Cancel or reschedule a monthly meeting, so long as such agreement is reached at least 72 hours prior to the scheduled monthly meeting.
2. Hold monthly meetings through an in-person format, so long as such agreement is reached at least 72 hours prior to the scheduled monthly meeting.
3. Hold additional meetings, so long as the parties agree on a meeting agenda at least 72 hours prior to the additional meeting.

C. Referrals of Potential Statutory Violations

1. The parties may make referrals of potential violations of each other's statutes, where appropriate.
2. When DAG personnel became aware of conduct that may be unlawful and which falls within the jurisdiction of the NLRB, they will advise the affected individual(s) that an opportunity may exist to file a charge with the NLRB. DAG personnel will further provide the employee(s) with informational materials prepared by the NLRB which includes information about rights and remedies under the NLRA, along with contact information for the NLRB and may also refer the case to the NLRB POC for investigation.
3. When NLRB personnel become aware of conduct that may be unlawful and which falls within the jurisdiction of the DAG, they will advise the affected employee(s) that an opportunity may exist to file a complaint with DAG. NLRB personnel will further provide employee(s) with informational materials prepared by the DAG, which includes information about rights and remedies under the statutes enforced by DAG, along with contact information for the DAG and may also refer the case to the DAG POC for investigation.

D. Training and Development of Technical Assistance Documents

Where the parties mutually determine it to be appropriate, the DAG and NLRB may provide limited training to each staff in identifying cases and issues that may arise under the other's jurisdiction and develop technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the agencies enforce.

The parties agree to jointly disseminate outreach materials to the

regulated community where appropriate.

All public materials bearing the NLRB name, logo, or seal must be approved in advance by the NLRB. All public materials bearing the DAG name, logo, or seal must be approved in advance by the DAG. Any 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 party.

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 state and federal statutes or laws. Confidential information may include: 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 state or 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 the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.
2. The party receiving the confidential information shall maintain its confidentiality and, except as specifically provided in this Section (E), or with the written approval of the party providing the information, will not disclose or otherwise make public any confidential information to a third party. Each party will ensure that its staff will only access confidential information shared pursuant to this MOU where they have a need for the record in the performance of their duties.
3. Confidential information obtained under this MOU, or any process established to implement the MOU, is intended only for use and access by the receiving parties for the limited purpose of carrying out activities under this MOU, or as required by applicable laws and regulations. Except as set forth in this Section (E), such information may not be used or disclosed by the receiving party for other purposes outside of the MOU or any process established to implement the MOU, to other authorities, or any third parties unless the producing party

expressly approves such use or disclosure in writing. The information shall not be disclosed externally without: a legally valid and enforceable order of a court of competent jurisdiction; an order issued by a state or federal Administrative Law Judge; a formal request from an oversight entity or, otherwise, if compliance is deemed compulsory, a request or demand from a duly authorized committee of either the Michigan or United States Senate or House of Representatives; 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. When disclosing information externally pursuant to any of the above, the receiving party shall notify and confer with the supplying party prior to duplicating or disclosing information.

4. If there is a public proceeding, such as a trial, in which certain records may be used (which have been authorized under Paragraph 3) or testimony of the DAG's employees sought, the DAG requires that the NLRB notify the DAG's POC under Section A, Subsection 4.

5. If there is a public proceeding, such as a trial, in which certain records may be used (which have been authorized under Paragraph 3) or testimony of the NLRB's employees sought, the NLRB requires that the DAG notify the NLRB's POC under Section A, Subsection 4.

6. Should either party receive a request or subpoena that would, fairly construed, seek production of confidential information that it received under this MOU, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to: (a) asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days; (b) promptly notifying the supplying party's POC under Section A, Subsection 4, that such a request or subpoena has been received, so that the supplying party may file any appropriate objection or motion, or take any other appropriate steps, to preclude or condition the production of such information; and (c) consistent with law, notifying the requestor seeking the confidential information that requests for such information should be made directly to the providing party in accordance with applicable law. In the event that the party receiving a request or subpoena would be subject to a fine, disciplinary action which would prejudice such party, held in contempt, or in violation of a court order, statute, or other lawful requirement, the ten (10) business days detailed above shall be waived and the receiving party shall only be required to provide to the supplying party as many days' notice as is permitted by court order, statutory scheme, or other lawful requirement.

7. No 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 parties will notify one another, through the applicable agency POC under Section A, Subsection 4, 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.

F. Information Security

1. For information security purposes, information (including paper-based documents and electronic information such as emails) exchanged under this MOU remains the responsibility of the supplying party while in transit. The parties agree to establish a communication protocol for notifying each other's designated POC when information is sent to or received from that party, including information on the form of the transfer and the media type and quantity (when appropriate). A party expecting to receive information will notify the supplying party if the information is not received as of the next business date following the agreed upon delivery date. Confidential data may only be transmitted and/or exchanged via secure file transfer or encrypted communication. Confidential data will be destroyed no later than thirty (30) days after its use, unless such time is extended by mutual agreement between the parties. Use includes the period required for compliance with any applicable state and/or federal records retention periods.
2. For information security purposes, after a party receives information from the supplying party, the supplying party retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the party that received it.
3. The parties will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any confidential information obtained from either party pursuant to this MOU.
4. If the party receiving the information experiences and discovers a security breach, and/or accidental disclosure which results in the

suspected or confirmed inadvertent disclosure of the data exchanged under this MOU, the party experiencing the incident or disaster will send formal written electronic notification to the supplying party's designated contact person as soon as practicable and no longer than three (3) business days after detection of the breach. The written electronic notification will describe the security incident or disaster in detail including what data exchanged under this MOU may have been inadvertently disclosed.

5. At the conclusion of an investigation and prosecution by either party, the receiving party will return all confidential information to the supplying party, except as required by law, including the Federal Records Act, or, with the written consent of the supplying party, will destroy it no later than thirty (30) days after its use (including the time period required for compliance with applicable state and federal records retention laws.)
6. By entering this MOU, the parties do not imply an endorsement or promotion by either party of the policies, programs, or services of the other. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

G. Previous Agreements

This MOU supersedes all previous agreements between the DAG and the NLRB.

H. Resource Provisions

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities under this MOU. This MOU does not itself authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the parties to expend appropriations or enter any contract or other obligations.

I. Totality and Entire Agreement

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

J. Termination

This MOU may be cancelled by either party by providing thirty (30) days advance written notice to the other party 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 under this MOU shall survive the termination of the MOU.

K. Effect of this MOU

1. This MOU does not create any legally binding obligations on the parties and does not create any right enforceable against the parties or any of their officers, employees, or any other person. This MOU also does not confer upon any third-party the right or ability, either directly or indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this MOU. This MOU does not modify the ability and responsibility of the parties to enforce their representative statutes and regulations.
2. This MOU and all its terms and conditions are not intended to relieve either party of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422.

L. Survival

Any right obligation, or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this MOU; such rights, obligations, or conditions includes, but are not limited to, those related to non-disclosure of confidential information and information security.

M. Amendments

This MOU may not be amended except by signed agreement between the parties.

N. Execution

This MOU may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement.

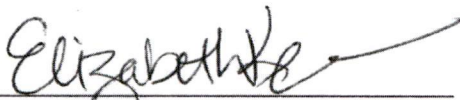
O. Authority

Each Party to this MOU has requisite legal authority to enter this MOU. In the event of any material change to its authority, a Party will provide written notification to the other within ten (10) calendar days of any such change.

This MOU is executed as of the 2nd day of August, 2024.

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


For the NLRB Region 7:



Elizabeth Kerwin
Regional Director, Region 7

8/12/24
Date

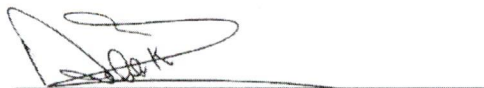
For the NLRB Region 18



Jennifer Hadsall
Regional Director, Region 18

8/12/2024
Date

**For the Michigan Department of
Attorney General**



Debbie Taylor
Labor Division Chief

08/02/2024
Date