

MEMORANDUM OF UNDERSTANDING
BETWEEN
OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR
EMPLOYMENT PRACTICES
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE
AND
WAGE & HOUR DIVISION
U.S. DEPARTMENT OF LABOR
REGARDING
INFORMATION SHARING AND CASE REFERRAL

Whereas, the U.S. Department of Justice's Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, and the U.S. Department of Labor's Wage & Hour Division enforce labor or employment laws and conduct investigations that sometimes uncover violations of law that may fit within the other agency's mandate;

Whereas, these agencies wish to work more collaboratively to ensure that employers are complying with the laws their agencies enforce; and

Whereas, these agencies wish to facilitate information-sharing to better identify practices that violate the laws that the agencies enforce.

They hereby enter into the following agreement.

1. PARTIES

The parties to this Memorandum of Understanding (MOU) are Wage & Hour Division (WHD), a component of the U.S. Department of Labor (DOL), and the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), a component of the Civil Rights Division of the U.S. Department of Justice (DOJ) (together the "Parties"). The Parties have the following responsibilities:

A. Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices

The Department of Justice's Civil Rights Division prosecutes violations of criminal civil rights statutes and enforces federal statutes and executive orders that prohibit, among other things, unlawful discrimination in voting, education, employment, housing, police services, public accommodations and facilities, and federally funded and conducted programs.

OSC is the Section within the Civil Rights Division that is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. The categories of discrimination prohibited under the INA are:

1. Citizenship status discrimination: when individuals are rejected for employment, treated adversely in the hiring process, or fired because of their real or perceived citizenship or immigration status, or because of their type of work authorization. U.S. citizens, temporary residents, recent lawful permanent residents, asylees, and refugees are protected from citizenship status discrimination.
2. National origin discrimination: when individuals are rejected for employment, treated adversely in the hiring process, or fired because of their country of origin, ancestry, native language, accent, or associations with persons of a particular national origin, or because they are perceived as looking or sounding "foreign." All work-authorized individuals are protected from national origin discrimination.

The number of employees that an employer has will dictate whether OSC or the Equal Employment Opportunity Commission (EEOC) has jurisdiction over an allegation of national origin discrimination. The EEOC enforces Title VII of the Civil Rights Act of 1964 ("Title VII"), which prohibits discrimination on the basis of race, color, sex, religion, and national origin. Title VII covers both intentional and unintentional acts of discrimination in the workplace, including discrimination in hiring, firing, recruitment, promotion, assignment, compensation, and other terms and conditions of employment.

In general, OSC covers national origin discrimination allegations against smaller employers, those that employ between four and fourteen employees, and the EEOC covers national origin discrimination against larger employers, employers with 15 or more employees, if the employees work for twenty or more calendar weeks in the current or preceding calendar year. OSC and the EEOC have an MOU, detailing the procedures by which the two offices handle charges that fall within the jurisdiction of the other agency.

3. Unfair documentary practices: when, during the employment eligibility verification process (including completion of the Form I-9 and the E-Verify processes), employers request more or different documents than are required to verify employment eligibility, reject reasonably genuine-looking documents, or request

specific documents with the intent to discriminate on the basis of national origin or citizenship status. All work-authorized individuals are protected from document abuse.

4. Retaliation: when employers threaten, intimidate, coerce or retaliate against an individual for the purpose of interfering with any right or privilege secured under this provision or because the individual has filed a charge or intends to file a charge or participates in an investigation or any proceeding. All individuals are protected from retaliation.

Injured parties may file charges with OSC alleging a violation of 8 U.S.C. § 1324b within 180 days of the alleged discrimination. However, OSC also initiates independent investigations (without the filing of a charge) if there is reason to believe that unlawful discrimination has occurred. Although independent investigations normally involve alleged discriminatory policies that potentially affect many employees or applicants, OSC may also conduct independent investigations when even one person is allegedly discriminated against.

B. Wage & Hour Division

WHD has authority over and is responsible for enforcing the following statutes:

The Fair Labor Standards Act (FLSA) is the federal law commonly known for minimum wage, overtime pay, child labor, recordkeeping, and special minimum wage standards applicable to most private and public employees.

The government contracts statutes set labor standards for wages and hours of work for employees who work on contracts with the Federal government. The Davis-Bacon and Related Acts (DBA) & (DBRA) cover workers on Federal construction contracts, and on construction contracts with State and local governments that are Federally financed or assisted, in whole or in part. The McNamara-O'Hara Service Contract Act (SCA) applies to workers on Federal service contracts. The Contract Work Hours and Safety Standards Act provides for overtime under both DBA and SCA. The Walsh-Healey Public Contracts Act (PCA) applies to workers on Federal supply contracts.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) sets standards for migrant and seasonal agricultural workers regarding disclosure, wages, housing, and transportation. MSPA requires that contractors of migrant agricultural workers register with the Federal government, and notify prospective workers of the wages and working conditions before they are hired.

Wage and Hour has certain responsibilities under the Immigration and Nationality Act (INA). These include: enforcement of the labor standards protections for certain temporary nonimmigrant workers admitted to the U.S. under several programs (D-1, Crewmembers; H-1B/E-3/H-1B1, Professional and Specialty Occupation Workers; H-1C, Nurses; H-2A Agricultural Workers; and H-2B Temporary Workers). In some

circumstances, domestic workers in corresponding employment are also covered by some of these protections.

The Employee Polygraph Protection Act (EPPA) prohibits most private employers (Federal, State, and local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. Polygraph tests, but no other types of lie detector tests, are permitted under limited circumstances subject to certain restrictions.

The Family and Medical Leave Act (FMLA) entitles eligible employees to 12 weeks of unpaid, job-protected leave for certain family and medical reasons. At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles. The employee may be required to provide advance leave notice and medical certification. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any group health plan. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

2. AUTHORITY

This MOU is entered into in accordance with the following authorities:

- Section 274B of the Immigration and Nationality Act; 8 U.S.C. § 1324b
- The Fair Labor Standards Act, 29 U.S.C. § 211; the Davis Bacon and Related Acts, 29 CFR § 5.6; the McNamara-O'Hara Service Contract Act, 29 U.S.C. § 6707; the Walsh-Healy Public Contracts Act, 29 U.S.C. § 6506; the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1862; the Immigration and Nationality Act, 29 CFR § 655.805, 29 CFR § 501.6, 29 CFR § 503.7; the Employee Polygraph Protection Act, 29 U.S.C. § 2004; and the Family and Medical Leave Act, 29 U.S.C. § 2616.

3. PURPOSE

The purpose of this MOU is to establish a process for information sharing and referrals between WHD and OSC with respect to the laws the agencies enforce.

4. WHD RESPONSIBILITIES

- a. Where appropriate and to the extent allowable by law, policy, and WHD resources, WHD may:
 - A. designate a point of contact (POC) who will ensure cooperation, communication, and coordination with OSC;

- B. promptly refer to OSC all written or walk-in complaints alleging discrimination and any other matters within OSC's jurisdiction. If OSC determines that a matter should be forwarded to EEOC, it will do so pursuant to the requirements of OSC's MOU with EEOC. In particular, WHD may refer all matters that may involve an individual act or a pattern or practice of employment discrimination on the basis of national origin or citizenship status; unfair documentary practices; or retaliation. If WHD continues to investigate a matter that is referred to OSC, WHD will coordinate its activities regarding the matter with OSC to the greatest extent possible without compromising WHD's or OSC's investigation;
 - C. include a copy of the complaint or charging document describing the allegations that might violate 8 U.S.C. § 1324b, and other documentation describing or relating to the alleged illegal conduct, in the referral to OSC;
 - D. when encountering potential victims of discrimination who have not filed written complaints, promptly provide them with information about OSC's hotline (800) 255-7688 or (800) 237-2515 (TTY for hearing impaired), a copy of OSC's charge form, and/or information on how to access OSC's charge form; and
 - E. act, and is hereby designated as, an agent for OSC for the sole purpose of satisfying the time limits for filing a charge when WHD receives a written communication alleging conduct (like discharge or failure to hire) that may violate the anti-discrimination provision of the INA. To ensure that filing deadlines are satisfied, WHD shall accurately record the date of receipt of such communications.
- b. A request from WHD for additional information beyond charge information from OSC's investigation file will be transmitted to the OSC POC through a sharing letter that references the MOU.
 - c. Consistent with applicable laws, regulations, and policies, and the availability of WHD resources, WHD will commit personnel and resources sufficient to support this MOU.

5. OSC RESPONSIBILITIES

- a. Where appropriate and to the extent allowable by law, policy, and OSC resources, OSC may:
 - A. designate a POC who will ensure cooperation, communication, and coordination with WHD;
 - B. promptly refer to WHD all written or verbal complaints alleging any matters within WHD's jurisdiction. In particular, OSC may refer all matters that may involve a violation of the laws WHD enforces. If OSC continues to

investigate a matter that is referred to WHD, OSC will coordinate its activities regarding the matter with WHD to the greatest extent possible without compromising OSC's or WHD's investigation;

- C. include relevant documents or information collected during the investigation and relevant information obtained through OSC's hotlines in the referral to WHD;
 - D. promptly share information relating to suspected employer violations of the laws that WHD enforces with WHD and/or encourage the harmed individual(s) to promptly call the WHD hotline at 866 4USWAGE (1 866 487 9243);
 - E. accurately record the date of receipt of such communications.
- b. A request from OSC for additional information beyond charge information from WHD's investigation file will be transmitted to the WHD POC through a sharing letter that references the MOU.
 - c. Consistent with applicable laws, regulations, and policies, and the availability of OSC resources, OSC will commit personnel and resources sufficient to support this MOU.

6. POINTS OF CONTACT

- a. The OSC POC is the Special Counsel, the Deputy Special Counsel, a designee, or a successor.
- b. The WHD National POCs are the Director of Division of Enforcement Policy and Procedure and the Branch Chief for Immigration and Farm Labor, a designee, or a successor.
- c. The WHD Regional POCs are each of the five Regional Directors of Enforcement.

7. EXCHANGE AND DISCLOSURE OF INFORMATION

- a. All information exchanged between the Parties under this MOU will be done in accordance with applicable laws, regulations, and policies, including but not limited to information-security guidelines of the sending party with respect to any information that is deemed personally identifiable information (PII), including but not limited to the employee's or applicant's name, Social Security number, alien number, date of birth, or other information that may be used to identify the individual. The Parties' obligations to exchange information under this MOU, including but not limited to referrals under Sections 4 and 5 of this MOU, are subject to all exclusions and/or limitations imposed by existing confidentiality protections and/or other MOUs.

- b. All information exchanged between the Parties under this MOU will be done only through the POCs identified above, their designees, or successors.
- c. WHD will not disclose to third party agencies or individuals outside of WHD any information received from OSC under this MOU without first obtaining authorization from OSC. OSC will not disclose to third party agencies or individuals outside of the Civil Rights Division any information received from WHD under this MOU without first obtaining authorization from WHD, except that, pursuant to an MOU between OSC and EEOC, OSC will refer to EEOC any national origin discrimination referral received from WHD that falls within EEOC's jurisdiction.
- d. This MOU does not confer any rights or benefits to any third party.
- e. In the event that there is a public proceeding, such as a trial, in which confidential information obtained from WHD may be used or testimony of WHD's employees sought, OSC shall notify WHD. In the event that there is a public proceeding, such as a trial, in which confidential information obtained from OSC may be used or testimony of OSC's employees sought, WHD shall notify OSC.

8. REPORTING SECURITY BREACHES AND DISCLOSURES OF PERSONAL INFORMATION

To further safeguard the privacy, security, confidentiality, integrity and availability of the connected systems and the information they store, process and transmit, the Parties agree to:

- a. Comply with their existing reporting requirements for any breach of security related to information and documents shared through the referral process outlined in this MOU;
- b. Comply with their existing reporting requirements for any unauthorized use or disclosure of any personal information shared under this MOU; and
- c. Notify the other agency of each breach of security or unauthorized use or disclosure of personal information if not otherwise required to do so.

9. TRAINING

Reciprocal training is required to familiarize each agency with the other's jurisdiction and to help staff recognize what may constitute immigration-related employment discrimination and violations of the laws enforced by WHD.

WHD will provide training and related materials to OSC, and OSC will provide training and related materials to WHD. Training will occur on an ongoing basis as necessary to facilitate referrals under this MOU.

10. OTHER PROVISIONS

- a. If the referring Party has retained jurisdiction over any aspect of an investigation at the time of referral to the other Party, both Parties will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort and any risk that a Party's investigation or action may adversely affect another ongoing investigation.
- b. Nothing in this MOU is intended to conflict with existing laws, regulations or other guidance binding on WHD and/or OSC. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. If a Party identifies any such inconsistency, it shall bring it to the attention of the other Party in order to modify the MOU as may be necessary.
- c. This MOU is not intended to create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.
- d. Exchange of information pursuant to this agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
- e. OSC and WHD 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. §2401, et seq. OSC and WHD 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 policies.

11. EFFECTIVE DATE

This MOU will take effect upon the date of the last signature of the approving officials appearing below.

12. MODIFICATION

This MOU may be modified by the mutual, written consent of the Parties.

13. REVIEW

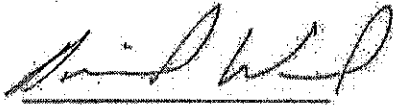
The Parties agree to review of the MOU within one (1) year of the effective date to determine whether any modifications are necessary to more effectively accomplish the goals of the MOU. Failure to conduct a review, however, will not result in the termination of this MOU.

14. TERMINATION

This MOU will remain in effect unless terminated by either Party upon sixty (60) days written notice to the other Party.

SIGNATORY AUTHORITIES

Dated: 1/13/2017



David Weil
Administrator
Wage & Hour Division
Related
Department of Labor

Dated: 1/13/2017



Alberto Ruisanchez
Deputy Special Counsel
Office of Special Counsel for Immigration-
Unfair Employment Practices
Civil Rights Division
Department of Justice