

# **APPENDIX F**

## **2011 Revised MOU**

## Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites

### I. Purpose

This revised memorandum of understanding (MOU) is entered into by the Department of Homeland Security (DHS) and the Department of Labor (DOL). Its purpose is to set forth the ways in which the Departments will work together to ensure that their respective civil worksite enforcement activities do not conflict and to advance the mission of each Department.

In entering this MOU, both Departments recognize the importance of enforcing labor and immigration laws relating to the worksite. Effective enforcement of labor law is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status. Effective enforcement of immigration law is essential to protect the employment rights of lawful U.S. workers, whether citizen or non-citizen, and to reduce the incentive for illegal migration to the United States. The parties further recognize that effective enforcement of both labor- and immigration-related worksite laws requires that the enforcement process be insulated from inappropriate manipulation by other parties.

### II. Affected Components within the Departments

The principal and responsible parties to this MOU are the following components within each Department. On behalf of the Department of Homeland Security, the principal component is U.S. Immigration and Customs Enforcement (ICE). On behalf of the Department of Labor, the principal components are the Wage and Hour Division (WHD), the Office of Federal Contract Compliance Programs (OFCCP), the Occupational Safety and Health Administration (OSHA), the Office of Labor-Management Standards (OLMS), and the Office of the Assistant Secretary for Policy (OASP).

### III. Definitions and Understandings

For purposes of this MOU—

- A. A “labor dispute” means a labor-related dispute between the employees of a business or organization and the management or ownership of the business or organization concerning the following employee rights:
  - the right to be paid the minimum legal wage, a promised or contracted wage, and overtime;
  - the right to receive family medical leave and employee benefits to which one is legally entitled;
  - the right to have a safe workplace and to receive compensation for work-related injuries;
  - the right to be free from unlawful discrimination;

- the rights to form, join or assist a labor organization, to participate in collective bargaining or negotiation, and to engage in protected concerted activities for mutual aid or protection;
  - the rights of members of labor unions to union democracy, to unions free of financial improprieties, and to access to information concerning employee rights and the financial activities of unions, employers, and labor relation consultants; and
  - the right to be free from retaliation for seeking to enforce the above rights.
- B. The worksite enforcement activities of DHS include the civil authorities of ICE to inspect Forms I-9, to investigate, to search, to fine, and to make civil arrests for violations of the immigration laws relating to the employment of aliens without work authorization. They do not include any of ICE's criminal authorities.
- C. The worksite enforcement activities of DOL include the authority of WHD, OFCCP, OSHA, and OLMS to enforce the requirements of the labor laws under their jurisdiction, including the relevant provisions of the Fair Labor Standards Act, Family and Medical Leave Act, the Migrant Seasonal Worker Protection Act, the Davis Bacon and Related Acts, the Service Contract Act, Executive Order 11246, the Occupational Safety and Health Act, the Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act of 1973, the Labor-Management Reporting and Disclosure Act of 1959, and Section 211a of the Labor-Management Relations Act of 1947. OASP does not have enforcement authority.

#### IV. Coordination and Deconfliction

ICE and the principal DOL components agree to the following commitments and exchanges in order to ensure coordination and deconfliction of their respective civil enforcement activities.

- A. Except as noted in paragraph C, ICE agrees to refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding. ICE will continue its existing practice of assessing whether tips and leads it receives concerning worksite enforcement involve a worksite with a pending labor dispute. DOL agrees to assist ICE's efforts under this paragraph by providing ICE with timely and accurate information to allow for identification of overlapping enforcement activity.
- B. ICE further agrees to be alert to and thwart attempts by other parties to manipulate its worksite enforcement activities for illicit or improper purposes. ICE will continue its existing practice of assessing whether tips and leads it receives concerning worksite enforcement are motivated by an improper desire to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws. DOL agrees to assist ICE's efforts under this paragraph by informing ICE of information DOL may have that other parties seek to manipulate a pending labor dispute, retaliate against employees for exercising labor rights, or otherwise frustrate the enforcement of labor laws.

- C. Notwithstanding paragraph A, ICE may engage in worksite enforcement activities at a worksite that is the subject of a pending labor dispute if—
- the Director or Deputy Director of ICE determines the enforcement activity is independently necessary to advance an investigation relating to national security, the protection of critical infrastructure (e.g., ports, power plants, or defense facilities), or a federal crime other than a violation relating to unauthorized employment;
  - the enforcement activity is directed by the Secretary of Homeland Security; or
  - the enforcement activity is requested by the Secretary of Labor, the Solicitor of Labor, or another Department of Labor official designated by the Secretary of Labor.
- D. In those instances in which ICE decides to engage in a worksite enforcement activity under paragraph C, ICE agrees to provide DOL notice unless the Director or Deputy Director of ICE determines that notice would violate federal law or would otherwise compromise the ICE investigation. ICE further agrees to make available for interview to DOL any person ICE detains for removal through a worksite enforcement activity conducted under paragraph C, provided the interview is consistent with federal and state law, would not compromise an ongoing ICE investigation or prosecution, and is approved by the relevant U.S. Attorney's Office. DOL agrees that any DOL interview conducted under this paragraph shall be at DOL's expense and shall not interfere with or delay removal proceedings except as provided in paragraph F below.
- E. Unless specifically agreed to by both DOL and ICE, ICE and the DOL components covered by this MOU will not conduct joint or coordinated civil enforcement activities at a worksite.
- F. ICE agrees to consider DOL requests that ICE grant a temporary law enforcement parole or deferred action to any witness needed for a DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding where such witness is in the country unlawfully. DOL agrees to provide ICE all needed information for ICE to consider the request and understands that any parole or deferred action ICE may grant will ordinarily terminate upon the completion of DOL's investigation and any related proceeding. DOL further agrees to inform ICE on a periodic basis determined by ICE and DOL whether parole or deferred action for a given witness is still needed and to assist ICE with any monitoring or supervision of the witness. ICE and DOL retain full worksite enforcement authorities (as identified in Section III) to seek a visa or other remedy for a DOL witness during the pendency of a DOL investigation and any related proceeding.
- G. Under no circumstances will ICE personnel engaged in enforcement activities at a worksite suggest that they represent or act for DOL absent the express approval of DOL. Similarly, under no circumstances will DOL personnel engaged in enforcement activities at a worksite suggest that they represent or act for ICE absent the express approval of ICE.
- H. ICE and DOL agree to create a joint Worksite Enforcement Coordination Committee to review the implementation of this MOU, resolve any disputes, work in partnership as cases

arise, and deconflict civil enforcement activities. This committee shall meet each quarter unless the parties determine otherwise. Any disputes concerning the implementation of this MOU that cannot be resolved by the committee shall be resolved by the Deputy Director of ICE and the relevant Deputy Assistant Secretary or equivalent designated by DOL.

- I. ICE and DOL agree to create a means to exchange information to foster enforcement against abusive employment practices directed against workers regardless of status. ICE agrees to develop a means to refer to DOL information concerning violations of DOL's civil worksite authorities described in section III of this MOU. DOL agrees to develop a means to refer to ICE information concerning ICE's criminal worksite authorities relating to human smuggling and trafficking; child exploitation; and extortion or forced labor.
- J. ICE and DOL agree to ensure that this MOU is disseminated and implemented within ICE and DOL through appropriate implementation instructions, employee notification, and training.
- K. ICE and DOL agree to seek each other's approval before issuing press releases that mention each other's enforcement activities.
- L. ICE and DOL agree to keep confidential information shared pursuant to section IV(A) of this MOU.

V. Effective Date

- A. This MOU is effective upon signature and valid until rescinded by either ICE or DOL subject to Section V (B). ICE and DOL agree, however, to assess the terms and effectiveness of this MOU one year from the date of signing and to consider whether modifications or additions are needed.
- B. This MOU reflects the full understanding between ICE and DOL on this subject and may not be modified without ICE and DOL's consent. Both ICE and the relevant DOL components may unilaterally rescind their participation in the MOU but only upon written notice to all other signatories provided at least 60 days in advance.
- C. This MOU voids and supersedes all previous MOUs on this subject between ICE (including its predecessor, the Immigration and Naturalization Service) and DOL.

D. This MOU is an agreement between DHS and DOL, and does not create or confer any right or benefit on any other person or party, public or private. Nothing in this MOU or its implementation is intended to restrict the legal authority of ICE or the relevant DOL components in any way.

For the Department of Homeland Security



John Morton  
Director  
U.S. Immigration and Customs Enforcement  
Department of Homeland Security

Date: DEC 07 2011

For the Department of Labor



M. Patricia Smith  
Solicitor of Labor  
Department of Labor

Date: DEC 07 2011

## **Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites**

### **I. Purpose**

- A. Pursuant to Section V(A) of the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (the MOU) dated December 7, 2011, the Departments, in an effort to increase the effectiveness of the MOU, agree to the modifications of the MOU contained herein.
- B. This Addendum recognizes the importance of interagency coordination between law enforcement authorities when enforcing labor, employment, and immigration laws relating to the worksite and the need for these authorities to work together to ensure that respective civil worksite enforcement activities do not conflict and are not manipulated by third parties while advancing the respective missions of each agency.
- C. The Department of Homeland Security (DHS), through its principal component, U.S. Immigration and Customs Enforcement (ICE); Department of Labor (DOL); the Equal Employment Opportunity Commission (EEOC); and the National Labor Relations Board (NLRB) (collectively “the parties”), are therefore entering into this Addendum to the MOU. The purpose of this Addendum is to set forth ways in which the EEOC and the NLRB will work together with DOL and DHS/ICE, the original parties to the MOU, to ensure that the civil worksite enforcement activities of the EEOC and the NLRB do not conflict with ICE’s workforce enforcement activities, and to advance the respective missions of each agency. This Addendum further seeks to facilitate dialogue among the parties.

### **II. The Worksite Enforcement Activities and Authorities of the EEOC and the NLRB**

- A. The worksite enforcement activities of the EEOC include the authority to enforce Title VII of the Civil Rights Act of 1964 (race, color, sex, national origin, and religion), the Equal Pay Act of 1963 (sex), Title I and Title V of the Americans with Disabilities Act of 1990 (disability), the Age Discrimination in Employment Act of 1967 (age 40 and older), and Title II of the Genetic Information Nondiscrimination Act of 2008 (acquisition or use of genetic information), as well as the authority to enforce the provisions of these laws prohibiting an employer from engaging in retaliation against an employee or job applicant for opposing practices believed to be discriminatory or participating in an employment discrimination proceeding.
- B. The worksite enforcement activities of the NLRB include the authority to enforce the National Labor Relations Act (NLRA), which protects employees’ rights to join together, with or without the assistance of a labor organization, to seek better pay or working conditions from their employer through collective bargaining or other lawful means. Workers employed by employers under the NLRA’s jurisdiction are guaranteed the basic associational and collective bargaining rights set forth in Section III(A) of the MOU, as well as the right to be free from retaliation by their employer or labor union, if one is involved. The NLRA also prohibits an employer from engaging in retaliation against an employee or job

applicant for invoking the NLRB's processes or seeking redress of actual or perceived violations of the NLRA.

### **III. Agreement of the Parties**

- A. Consistent with their respective jurisdictions, the EEOC and the NLRB agree to the same commitments and exchanges as agreed to by DOL under Section IV of the MOU. DHS and ICE retain the same commitments and exchanges as agreed to in the MOU, but where their commitments and exchanges apply with respect to DOL in the MOU, those commitments and exchanges shall apply with respect to the EEOC and the NLRB as well. In the case of a conflict covered by Section IV(A) of the MOU and upon request by ICE in a specific matter, the relevant agency would respond to ICE's inquiry as to whether the specific conflict has ended. Except as specified in Section III(D) of this Addendum, DOL will retain the same commitments and exchanges as described in the MOU.
- B. Section IV(C) of the MOU is hereby modified to read:  
Notwithstanding paragraph A, ICE may continue to engage in worksite enforcement activities at a worksite that is the subject of the investigation of a labor dispute if -
- The Director of ICE, Deputy Director of ICE, or their designee determines the enforcement activity is independently necessary to advance an investigation relating to national security, the protection of critical infrastructure (e.g., ports, power plants, or defense facilities.), or a federal crime other than a violation relating to unauthorized employment; or
  - The enforcement activity is directed by the Secretary of Homeland Security or the Secretary's designee.
- C. Section IV(D) of the MOU is hereby modified to read:  
In those instances in which ICE decides to engage in a worksite enforcement activity under Section IV(C) of the MOU, ICE agrees to provide notice to the relevant labor agency, unless the Director of ICE, Deputy Director of ICE, or their designee determines that notice would violate federal law or would otherwise compromise the investigation. The parties also agree to exchange points of contact in these instances in order to better coordinate the overlapping investigations. To the extent practicable, ICE agrees to make available for interview to DOL, the EEOC, or the NLRB any person ICE detains for removal through a worksite enforcement activity, provided the interview is consistent with federal and state law, would not compromise an ongoing ICE investigation or prosecution, and is approved by the relevant U.S. Attorney's Office (when applicable). DOL, the EEOC, and the NLRB agree that any labor agency interview conducted under this paragraph shall be at the labor agency's expense and shall not unreasonably interfere with or delay removal proceedings except as provided in Section IV(F) of the MOU.
- D. DOL generally will coordinate with the EEOC and NLRB in the deconfliction of investigations with ICE as set forth in Section IV, paragraphs A, B, and D of the MOU. The EEOC and NLRB will participate in the Worksite Enforcement Coordination Committee referenced in Section IV(H) of the MOU.



- E. All information shared pursuant to the MOU or this Addendum among the parties regarding coordination and deconfliction of their civil enforcement activities shall be treated as confidential, and the act of sharing information shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure.
- F. Information obtained pursuant to the MOU, this Addendum, or any process established to implement the MOU or Addendum, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU or this Addendum, or as required by applicable laws and regulations. Except as set forth below, such information may not be used or disclosed by the receiving party for other purposes outside of the MOU, this Addendum, or any process established to implement the MOU or Addendum, 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 federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act, the Trade Secrets Act, Sections 706(b) and 709(e) of Title VII, Section 107(a) of the ADA, and Section 207(a) of GINA. When responding to a federal court order, a producing party shall notify and confer with the supplying party prior to duplicating or disclosing information.
- G. Nothing in this Addendum is intended to preclude the internal use of information by the receiving party to the extent that there is an obligation to do so under applicable laws and regulations.

#### IV. Effective Date

- A. Effective as of the date of the latest signature below, this Addendum modifies and is fully incorporated into the MOU and supersedes any previous term inconsistent with the terms of this Addendum. To the extent that this Addendum contradicts the MOU, this Addendum will be controlling. All terms previously agreed to and not contradicted by this Addendum remain in effect. Modification of this Addendum shall be in writing and upon approval of all parties to this Addendum.
- B. This Addendum is valid until rescinded by EEOC, NLRB, DOL, and ICE. If only one party rescinds the agreement, it shall remain effective as to the others.
- C. The MOU and this Addendum reflect the full understanding of the parties on this subject and are intended to be read in conjunction with each other and represent one understanding. The MOU may not be further modified without the parties' consent. The parties may unilaterally rescind their participation in this Addendum but only upon written notice to all parties provided at least 30 days in advance.
- D. The MOU, to include this Addendum and all future modifications, is an agreement among the parties, and does not create or confer any right or benefit on any other person or party, public or private. Nothing in this Addendum or its implementation is intended to restrict the legal authority of the parties in any way.

For the Department of Homeland Security, U.S. Immigration and Customs Enforcement



Sarah R. Saldaña  
Director

Date: **MAY 05 2016**

For the Department of Labor



M. Patricia Smith  
Solicitor of Labor

Date: *5/6/2016*

For the U.S. Equal Employment Opportunity Commission



Jenny R. Yang  
Chair

Date: *may 6, 2016*

For the National Labor Relations Board



Richard F. Griffin, Jr.  
General Counsel

Date: *May 3, 2016*