

**Memorandum of Understanding
between
The National Labor Relations Board
and
The Occupational Safety and Health Administration
U.S. Department of Labor**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate interagency cooperation and coordination between the National Labor Relations Board (NLRB) and the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) by establishing a process for information sharing and referrals, training, and outreach between the agencies concerning the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, the Occupational Safety and Health Act of 1970 (OSH Act), including, but not limited to, its anti-retaliation provision, section 11(c), 29 U.S.C. 660(c), and any current and future statutory protections which OSHA is charged with enforcing, including various [whistleblower provisions](#).

II. BACKGROUND

- A. Section 7 of the NLRA in relevant part provides: "Employees shall have the right to ... engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. ..." Section 8 of the NLRA prohibits unfair labor practices which restrain or coerce employees in the exercise of the rights guaranteed in section 7. If a charge is filed with the NLRB, that agency investigates the case. If the General Counsel of the NLRB determines that the case has merit, unfair labor practice proceedings are instituted. Cases are heard by administrative law judges (ALJs) of the NLRB. The judges' decisions are appealable to the Board (as used in this MOU, the Presidentially appointed, Senate-confirmed Members of the NLRB) and thereafter may be reviewed by a United States court of appeals.
- B. The OSH Act is a statute of general application designed to regulate employment conditions relating to occupational safety and health to assure safe and healthful workplaces throughout the Nation. To achieve that purpose, the OSH Act provides broad authority to develop and implement activities and programs designed to reduce the number of occupational safety and health hazards at places of employment. Among these is the authority to promulgate mandatory workplace safety and health standards, and to conduct inspections of covered workplaces to determine compliance with the Act and with OSHA standards. When violations are found, OSHA is authorized to issue citations to employers, propose penalties, and require abatement of hazards. In cases involving imminent dangers, OSHA is authorized to seek injunctive relief in U.S. District Court.
- C. Section 11(c) (1) of the OSH Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on

behalf of himself or others of any right afforded by this Act." If an employee believes that they have suffered a violation of section 11(c), they may file a complaint with OSHA within thirty days of the violation. If the Secretary of Labor determines that section 11(c) has been violated, the Secretary, represented by a Regional Solicitor's Office, files suit in a United States district court, whose decision is reviewable by a United States court of appeals.

- D. In addition to the responsibility for enforcing section 11(c) of the OSH Act, the Secretary of Labor has delegated to OSHA the responsibility for investigating and enforcing various statutory whistleblower provisions. OSHA's Whistleblower Protection Program enforces protections for employees who suffer retaliation for engaging in protected activities under more than 20 federal laws. In addition to workplace health and safety, OSHA administers whistleblower provisions in federal laws related to: transportation services, environmental protection, fraud and financial matters, health insurance, consumer product safety, motor vehicle safety, and food safety.
- E. Many employee safety and health activities are protected under both the OSH Act and the NLRA. For example, both statutes protect the right of employees to complain to management about unsafe or unhealthful working conditions. Thus, the NLRB and OSHA have historically engaged in cooperative efforts and have entered into formal Memoranda of Understandings to engage in interagency coordination since 1975.

III. EXCHANGE OF INFORMATION

- A. The NLRB and OSHA may share, either upon request or upon the respective agency's own initiative, any information or data that supports each agency's enforcement mandates, whether obtained during an investigation or through any other sources to the extent permitted by law. This may include complaint referrals and other sharing of information in complaint or investigative files relating to alleged violations of the NLRA and laws enforced by OSHA. Information will only be shared after a careful review and determination from the supplying agency that the information is both relevant and necessary to the recipient agency's enforcement responsibilities and that the information will be used in a manner that is compatible with the purposes for which the agency collected the records. When information is shared, each agency must comply with the terms and conditions in Section III.E-F. of this MOU, as well as any additional terms and conditions the supplying agency may specify as to particular information shared. The agencies agree that each agency may decide not to share information in response to a particular request made for information, or to limit the scope or use of information shared in response to a particular request. In addition, the agencies will do the following:

1. OSHA

- i. OSHA will, when encountering potential victims of unfair labor practices who have not filed a complaint with the NLRB, promptly provide them or their collective bargaining representative with the NLRB's phone number (844) 762-6572 and website (www.nlr.gov);
- ii. if an employee who is the potential victim of an unfair labor practice files a section 11(c) complaint with OSHA and that complaint is untimely, OSHA

will advise the complainant that they may file a charge with the NLRB and that the NLRB time limit to file (6 months) is longer than OSHA's (30 days) and therefore OSHA recommends that the complainant contact the NLRB as soon as possible to discuss their rights. OSHA personnel will provide the complainant with the NLRB's phone number (844) 762-6572 and website (www.nlr.gov).

2. NLRB

- i. NLRB will promptly share with OSHA information related to workers currently or likely exposed to health or safety hazards or to suspected violations of the laws that OSHA enforces and/or encourage affected individual(s), representatives, or labor organizations to promptly contact OSHA, for instance, by calling OSHA at 1-800-321-6742 or filing an online safety and health or whistleblower complaint through OSHA's website, www.OSHA.gov.

B. Requests for information under this section can be made by the following individuals:

1. For OSHA

- Assistant Secretary of Labor for Occupational Safety and Health
- Deputy Assistant Secretaries of Labor for Occupational Safety and Health
- The Regional Administrators, or designees
- National Office Directors
- The Regional Solicitors of Labor, or designees
- The Associate Solicitor of Labor, Occupational Safety and Health, or designees

2. For the NLRB

- The General Counsel
- The Deputy General Counsel
- The Associate General Counsels in the Office of the General Counsel, Division of Operations-Management, Division of Enforcement Litigation, Division of Advice; Division of Legal Counsel; or their designees
- The Regional Directors, or their designees

C. OSHA's requests for information under this section should typically be directed to the NLRB Regional Office where OSHA believes that the information is located. Contact information for NLRB Regional Directors can be found here: <https://www.nlr.gov/about-nlr/who-we-are/regional-offices>. The OSHA requesting officials may also direct their requests for information to any of the NLRB officials listed above except for the General Counsel.

D. NLRB's requests for information under this section should usually be directed to the OSHA Regional Administrator in the region where the NLRB believes the information is located. Contact information for OSHA Regional Offices can be found here: <https://www.osha.gov/contactus/byoffice>. NLRB requesting officials may also direct their requests for information to any of the OSHA individuals listed above except for the Assistant Secretary of Labor for Occupational Safety and Health.

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 federal statutes or laws. Confidential information may include: the identity of persons who have given information to the agencies 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 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. Confidential information obtained pursuant to this MOU, or any process established to implement the MOU, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. Except as set forth in this paragraph, 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 supplying agency 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. When responding to a federal court order, a receiving agency shall notify and confer with the supplying agency prior to duplicating or disclosing information.

3. If an agency receives a FOIA request for records or information shared by the other agency pursuant to this MOU that are responsive to the request, the agency receiving the request will follow its FOIA regulations regarding referral, consultation, or coordination, working with the supplying agency to ensure the receiving agency's FOIA regulations are followed for disclosure. The receiving agency will ensure final disclosure decisions are made by the supplying agency (originating agency of the records or information) including decisions on whether the records are responsive or able to be disclosed.

4. In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of OSHA's employees sought, OSHA requires that NLRB give advance notice to OSHA.

5. In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of NLRB's employees sought, NLRB requires that OSHA give advance notice to NLRB.

6. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, 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 for ten (10) business days, and shall promptly notify the supplying agency that such a request or subpoena has been received, so that the supplying agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

7. 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.

8. The agencies will give advance notice to one another 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 pursuant to this MOU remains the responsibility of the supplying agency while in transit. The agencies agree to establish a communication protocol for notifying each agency when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the supplying agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use and may be transmitted via secure file transfer protocol. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.

2. For information security purposes, after an agency receives information from the supplying agency, the supplying 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.

3. However, in the event that the agency receiving the information experiences a security breach that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU, the agency experiencing the incident or disaster will send formal written electronic notification to the supplying agency's designated contact person as soon as practicable and no longer than 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 pursuant to this MOU may have been inadvertently disclosed.

4. At the conclusion of an investigation and prosecution by either party, the receiving agency will, upon timely request by the supplying agency, return any and all confidential information to the supplying agency, except as required by law, including the Federal Records Act.

IV. COORDINATED INVESTIGATIONS AND ENFORCEMENT

- A. In appropriate cases and to the extent allowable under law, the agencies will determine whether to conduct coordinated investigations and inspections, where doing so would facilitate and not delay enforcement action. If the agencies decide to conduct coordinated investigations, and both OSHA and NLRB find overlapping statutory violations, they shall explore and confer regarding what enforcement actions are appropriate for each agency to undertake.

V. TRAINING, EDUCATION AND OUTREACH

- A. The agencies agree that reciprocal training and education is important for the implementation of this MOU. Each agency shall provide ongoing training to appropriate personnel from the other agency. The NLRB shall train appropriate OSHA personnel on what constitutes concerted activity under section 7 of the NLRA, what constitutes an unfair labor practice under section 8(a) of the NLRA, and on the basic procedures for investigating and adjudicating unfair labor practice charges. OSHA shall train appropriate NLRB personnel on OSHA standards, recordkeeping and reporting regulations, the general duty clause, and employee rights that are protected under section 11(c) of the OSH Act and other whistleblower provisions OSHA is responsible for enforcing, as well as jurisdictional, coverage, and procedural requirements under those laws. Trainings may be tailored to those conditions and violations field staff from the respective agencies are most likely to encounter.
- B. Where the agencies mutually determine it to be appropriate, OSHA and NLRB shall engage in joint public engagement, outreach, and education, including at conferences, events, on social media, and during “Labor Rights Week,” and co-develop joint policy statements, guidance materials, and technical assistance documents to facilitate a greater understanding and awareness of the laws the agencies enforce.

VI. STATE PROGRAMS

- A. OSHA and NLRB will work together to facilitate referrals of potential violations to NLRB from the relevant state agencies in those states which operate their own occupational safety and health programs under a plan approved by OSHA under Section 18 of the OSH Act (State Plans).
- B. OSHA will expect State Plans to respond to referrals from NLRB concerning potential violations of the states' occupational safety and health standards or regulations by conducting investigations in a timely manner.
- C. OSHA will encourage State Plans to participate in all training and information-sharing activities established under this MOU.

VII. IMPLEMENTATION

The NLRB official responsible for the overall implementation of this agreement is the General Counsel. The General Counsel executes this agreement under the authority of 29 U.S.C. 153(d). The OSHA official responsible for the overall implementation of this agreement is the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary executes this agreement under the authority of 29 U.S.C. 651(b)(10).

VIII. PREVIOUS AGREEMENTS

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

IX. AMENDMENT AND TERMINATION

This agreement will take effect immediately once signed by both parties and will expire five (5) years from the effective date. Renewal of the agreement may be accomplished by written agreement of both agencies. This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.

X. LEGAL EFFECT

Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, including OSHA's authority under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, and the NLRB's authority under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. This MOU is effective upon signature by both parties.

This agreement does not itself 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.

XI. RESOLUTION OF DISAGREEMENTS

Should disagreements arise about the interpretation of the provisions of this agreement or amendments and/or revisions thereto that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration.

Dated: October 31, 2023


JENNIFER A. ABRUZZO
General Counsel
National Labor Relations Board

Dated: October 31, 2023


DOUGLAS L. PARKER
Assistant Secretary
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