

# DOL and NLRB Agree to Share Information and Counsel Employees on Overlapping Enforcement Matters

## Labor & Employment Law Update

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On January 6, 2022, the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB) released a signed Memorandum of Understanding (MOU) detailing the agencies' most recent pact to enforce federal labor and employment laws.

The partnership intends to ensure that workers receive proper wages and are able to

take collective action to improve working conditions without fear of retaliation. The MOU outlines several procedures on information-sharing, joint investigations and enforcement activity, and training meant to strengthen the agencies' partnership and enhance enforcement of the laws that they administer. The collaboration also seeks to allow for better enforcement against unlawful pay practices, misclassification of workers as independent contractors, and retaliation against workers exercising their legal rights.

Under the MOU, a formal referral process for violations of federal labor and employment laws will be established, making it easier for the government to pursue employers who have breached laws enforced by both agencies. In other words, the agencies have agreed to share any information or data that "supports each agency's enforcement mandates," including complaint referrals and information in investigative files. The agencies have also agreed to advise employees, directly, when "unlawful conduct [may] fall within the jurisdiction" of the other agency. For example, if the DOL uncovers conduct that it believes *may* violate the National Labor Relations Act (NLRA), while investigating an employer, it will advise employees of the potential opportunity to file charges with the NLRB.

The agencies also pledge to share information regarding the following topics:

- Unlawful compensation practices,
- Retaliation based on the exercise of rights guaranteed by the NLRA or laws enforced by the DOL/Wage and Hour Division (WHD),
- Discriminatory failure to hire, and
- The “identification and investigation of complex or fissured employment structures, including single or joint employer, alter ego, and business models designed to evade legal accountability.”

The partnership is the Biden administration’s latest attempt to fortify its enforcement posture against businesses’ practice of misclassifying workers as independent contractors in order to avoid the obligations and coverage of federal, state, and local laws. Under the pact, the agencies have announced initiatives to train staff to identify cases and issues that may arise under the other’s jurisdiction, joint participation in regional presentations and to develop shared training materials and programs.

The MOU took effect on December 8, 2021 and, absent renewal, will expire in five (5) years. Employers must take care to comply with all federal labor and employment laws, especially given that the DOL and NLRB appear to be particularly focused on tipping employees off on additional opportunities to make legal claims against their employers. Questions regarding these issues should be directed to experienced labor and employment counsel. As always, we will continue to monitor and post on any matters involving this new partnership.

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