

**AMENDED DATA EXCHANGE AGREEMENT BETWEEN**

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
UNEMPLOYMENT INSURANCE DIVISION**

**AND**

**STATE OF HAWAII  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION**

**I. PURPOSE**

This Agreement shall establish the conditions, safeguards, and procedures for the disclosure of unemployment insurance (UI) data by the Department of Labor and Industrial Relations (DLIR), Unemployment Insurance Division (UID), to the Hawaii Occupational Safety and Health Division (HIOSH) for the purposes of 1) creating an inspection scheduling list for HIOSH's compliance program and 2) creating mailing lists for outreach to employers such as notices of conferences and mailing informational materials. This Agreement supersedes the Amended Data Exchange Agreement Between State of Hawaii Department of Labor and Industrial Relations Unemployment Insurance Division and State of Hawaii Hawaii Occupational Safety and Health Division entered into on January 21, 2009.

HIOSH is requesting a list of all establishments within the UI database to create inspection lists as required by the Occupational Safety and Health Administration (OSHA) using U.S. Bureau of Labor Statistics data derived from NAICS (North American Industry Classification System) codes.

For conference purposes, the mailing process will be outsourced to a private printing company for the sole purpose of contacting interested companies. HIOSH will release the UI data to a private printing company contracted by HIOSH to handle the mailing for the conference. The Agreement ensures that the UI information so disclosed will be under the custody of HIOSH and use and access to the UI data will be limited to the purposes specified in this Agreement.

**II. LEGAL AUTHORITY/JUSTIFICATION**

HIOSH is the state agency that administers and enforces the State's Occupational Safety and Health Law, rules and regulations, through unannounced compliance inspections of safety and health conditions in places of employment; provides consultation services in places of employment; provides training and information on safety and health; inspects boilers, elevators, and related equipment on a regular basis; and issues Certificates of Fitness to use explosives. The Consultation and Training Branch of HIOSH plans for and executes the elements of a statewide consultation, training and information program to

promote employer's voluntary compliance with the law, administrative rules and standards.

UID is the state agency charged with the administration of the state UI law and stores information on employers in this State as prescribed by §383-94 of the Employment Security Law, Hawaii Revised Statutes, and §12-5-17, Administrative Rules.

Legal authority for the release of UI data by UID is found in §383-95 and the related regulations, §§ 12-5-211, 12-5-215, 12-5-219, and 12-5-220. Disclosure of UI data to a state agency shall be considered to be in the public interest only if such disclosure is in connection with its public duties and the information so disclosed will be used for the performance of such public duties, and the Director of DLIR has deemed that the disclosure to HIOSH meets these criteria. All UI data is considered confidential and authorized requesting agencies must enter into an agreement with UID in order to disclose information from employing units.

### III. DEFINITIONS

- A. "Disclose" or "disclosure" means the release of information or data by UID to HIOSH.
- B. "HIOSH" means the Hawaii Occupational Safety and Health Division, Department of Labor and Industrial Relations.
- C. "UI information" or "UI data" means the information obtained on employing units from the tax files pursuant to the administration of Chapter 383, Hawaii Revised Statutes.
- D. "UID" means the State of Hawaii, Department of Labor and Industrial Relations, Unemployment Insurance Division.

### IV. DESCRIPTION OF DATA TO BE DISCLOSED

- A. HIOSH is requesting UI data to:
  - 1. Compile a list of employers showing employer's names, physical locations, NAICS codes and employment level data reflecting the requirement range set by OSHA to prioritize inspections on an annual basis. The list will be comprised of establishments in the industries determined by OSHA and/or selected by HIOSH.
  - 2. Create a mailing list for conferences or for distribution of informational material. Specifically, the information requested is the employers' names including business name, business and mailing addresses, and NAICS codes for various industries as determined by HIOSH.

- B. UI information will be compiled and released in a file format by the HIOSH Research Statistician. The HIOSH Research Statistician will delete all UI employer account numbers and employment information from the file.

V. PROCEDURES FOR OBTAINING INFORMATION

- A. To create an annual inspection list, a request for employers in selected industries with high incidences of injury will be sent to UI by HIOSH.
  - 1. The HIOSH Research Statistician will produce data files, by county, containing the UI account number, 6-digit NAICS code, employers' legal name, employers' trade name, physical location address and employment for all employers.
  - 2. The HIOSH Research Statistician will process the data by removing establishments in accordance with parameters outlined in the HIOSH Field Operations Manual (FOM), this Agreement, and other relevant directives.
  - 3. The HIOSH Research Statistician will then remove all of the UI account numbers and employment information and create a file listing establishments who meet HIOSH's criteria for the annual inspection and send the file to UI for review. UI will then transmit the data to HIOSH.
- B. To create a mailing list, a request for all employers associated with the criteria set by HIOSH will be submitted to UI from HIOSH.
  - 1. The HIOSH Research Statistician will prepare a list of all NAICS codes associated with those criteria.
  - 2. The HIOSH Research Statistician will then prepare a file of all employers' names including business name and business and mailing addresses associated with the requested NAICS codes and send the file to UI for review. UI will then transmit the data to HIOSH.

VI. LIMITATIONS ON THE USE OF DISCLOSED UI DATA, INCLUDING DUPLICATION AND REDISCLOSURE RESTRICTIONS AND ACCURACY ASSESSMENT

- A. HIOSH recognizes that the statute, §383-95, and rules, §§12-5-211 to 12-5-220, prohibit use of the mailing list for purposes other than specified in this Agreement.
- B. HIOSH shall be held accountable for all redisclosed UI data to the private printing company and shall ensure that the UI data is not used for any other purpose not specifically authorized under this Agreement.

- C. As a condition for the release of UI information, HIOSH shall ensure that the private printing company shall not release, publish or otherwise use in any manner UI data except for the explicit purposes as stated in this Agreement.
- D. HIOSH and its agents or contractors shall not duplicate or disseminate the UI data without UID's written authorization except for mailing and registration for the purposes stated in this Agreement.
- E. HIOSH and its agents or contractors shall not extract information from the UI data therein for any purpose not stated in this Agreement.
- F. In addition, HIOSH shall enforce all of the above limitations imposed by this Agreement on the private printing company and that all entities will strictly abide by the terms of this Agreement.
- G. The data on employers are submitted to UID by the individual employers. Since UID is not the originator of the data disclosed to HIOSH, UID cannot attest to the accuracy of the UI data. It shall be the responsibility of HIOSH to verify the UI data received from employers, if necessary.

VII. PROCEDURES FOR SECURITY, RETENTION, AND DESTRUCTION OF RECORDS

- A. HIOSH, shall comply with the following measures to protect the confidentiality of the information disclosed against unauthorized access or redisclosure as provided in §12-5-220:
  - 1. HIOSH and its contractors shall adopt and adhere to its internal policies and procedures to ensure that the information obtained from UID shall be used only to the extent necessary to assist in the valid administrative needs of HIOSH.
- B. At a minimum, HIOSH shall bind its contractors to safeguard the data provided by UID as follows:
  - 1. **Administrative Safeguards.** HIOSH will safeguard the UI information disclosed by UID by limiting access to the UI information to only those authorized HIOSH employees who need it to perform their official duties in connection with the uses of the information authorized by this Agreement. The access to the UI data will also be limited to the agents' or contractors' employees who need it to perform their duties in connection with the uses of the information authorized by this Agreement.

HIOSH and its agents or contractors shall be held responsible for any release of UI data to an unauthorized person or entity.

2. **Physical Safeguards.** The UI data will be stored by HIOSH and its agents or contractors in an area that is physically secure from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.
  3. **Technical Safeguards.** The UI data shall be processed by HIOSH and its contractors under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records and ensure that only authorized persons are given access to UI data maintained in electronic format. Precautions should also be taken so that unauthorized persons are not given access and cannot retrieve any such files by means of computer, remote terminal, or any other means.
- C. HIOSH and its contractors shall permit UID and the U.S. Department of Labor (and other authorized federal officials) to make onsite inspections to assure that the requirements of §12-5-220 and of this Agreement are being met.
  - D. HIOSH and its contractors shall instruct all personnel with access to the UI information about the confidential nature of the information, the requirements of this Agreement, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance.
  - E. **Penalties.** HIOSH and its contractors shall instruct its employees that unlawful disclosure of the UI data will result in fines up to \$10,000 and/or imprisonment up to one year as described in §383-143 and §383-144 of the Hawaii Revised Statutes.
  - F. **Destruction of Records.** HIOSH shall also adopt and adhere to its internal procedures to destroy the UI data obtained from the UID, including all personal identifiers in such a manner that the confidentiality of the information disclosed is preserved. HIOSH shall ensure that the private printing company return any confidential UI data file in a timely manner for destruction by HIOSH.
  - G. All of the above measures for security, retention, and destruction of records shall be applicable to the private printing company and enforced by HIOSH.

#### VIII. FEES FOR SERVICES

- A. Any costs incurred by UID or HIOSH in complying with the terms of this Agreement shall be waived.

#### IX. DURATION OF AGREEMENT

- A. The terms of this Agreement shall be effective upon the signing of the Agreement by the authorized parties.

- B. UID may terminate this Agreement immediately if HIOSH or its agents or contractors violate any condition of this Agreement.
- C. This Agreement may be modified or terminated at any time upon mutual consent of all parties.
- D. In the event of an emergency, UID may suspend services with notice to HIOSH but will resume services at the earliest possible time.

X. AGENCY CONTACTS

- A. The contact on behalf of UID are:

- 1. Tanya Lee, Acting Program Development Officer  
Ph: (808) 586-9230  
Email: tanya.n.lee@hawaii.gov

- B. The contact on behalf of HIOSH is:

- 1. Nicole Bennett, Program Specialist  
Ph: (808) 586-9081  
Email: nicole.g.bennett@hawaii.gov

In witness thereof, the parties hereby execute this Agreement on

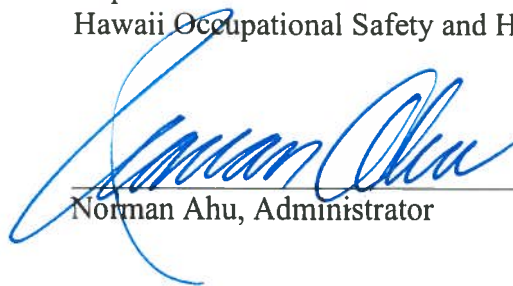
Monday, November 29, 2021

State of Hawaii  
Department of Labor and Industrial Relations  
Unemployment Insurance Division



\_\_\_\_\_  
Arthur M. Barba, Acting Administrator

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division



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Norman Ahu, Administrator

Approved as to form:

State of Hawaii  
Department of the Attorney General



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Li-Ann Yamashiro, Deputy Attorney General