

Tips to Ready Employers When Immigration Agencies Come Knocking

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Worksite enforcement actions for immigration-related matters are on the rise; the Obama Administration is emphasizing worksite compliance obligations; and immigration-related audits are increasing. So, it is critical for employers to prepare for a possible visit from any of the following government agencies: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Immigration Enforcement (ICE), the U.S. Department of Labor (DOL), and the U.S. Department of State (DOS). Specifically, USCIS has been conducting random site visits to review employers' file folders for nonimmigrants working in the United States under the H-1B, L-1 or E-3 visas. ICE has increased its I-9 employment verification audits and investigations. The DOL's wage and hour division has historically visited employers to audit the labor condition attestations (LCA), a DOL mandated form used as a part of the H-1B process. Recently, the DOS has commenced audits of J-1 training programs as well as site visits to J-1 Program Sponsor's offices. As a result, prudent employers must make even greater efforts to ensure their immigration-related activities and I-9 program are ready for review by any U.S. government agency responsible for immigration, including but not limited to "visits" in the form of telephone calls or emails, as well as in-person site visits. The following best practices can help ensure corporate immigration compliance and save employers from risk, liability, negative publicity, hefty civil and criminal penalties, lost productivity, and debarment from certain immigration programs (e.g., H-1B). **Preparing for USCIS, DOL, or DOS Site Visits**

1. Ensure that the correct telephone and email contact information is used on all USCIS, DOL, or J-1 training program petition forms.
2. Periodically check for emails or voicemail messages from the contact person listed on the petition forms since most email or telephone site visits require a response within three to five business days.

3. Ensure that the designated contact is aware of possible email or telephone site visits, and when the designated party changes, make sure designated contact is aware of such email and telephone site visits.
4. Ensure that the contact person knows to immediately notify immigration or employment counsel when there is a site visit by any of the U.S. government agencies.
5. Keep paper petition file copies, including all supporting documentation, separate and apart from the employee's personnel file and easily accessible if a site visit is conducted.
6. Keep electronic file copies of the petitions separate and apart from other electronic files pertaining to the employee, and ready for uploading if responding to an electronic site visit. These electronic files should be password protected when sent to any U.S. government agency.
7. Keep the H-1B LCA Public Access File (PAF) separate and apart from the H-1B and personnel file of the employee in order to be ready to provide to the DOL if an LCA audit is conducted.
8. Advise all foreign nationals who are on a temporary work visa on your premises or off-site of a possible site visit, and provide them with a copy of the relevant work visa petition. They should be aware of the contents and ready to respond to questions posed by the U.S. government agency during a possible interview.
9. Request that an employer designated party be present during any interview with any employee.
10. Appoint a designated party at each employer office location who will be responsible for addressing site visits. This "go-to" person needs to be trained on steps to take when there is a site visit.
11. Advise reception and telephone operators of possible site visits. Be sure they know who the U.S. government agent should be directed to at the employer. Advise reception that no U.S. government agent is to visit the premises unescorted at any time.
12. Design and distribute an instruction sheet for reception and the designated parties within the employer that addresses the steps to take during a site visit. The names and contact information of in-house employment counsel and outside immigration counsel should be prominently displayed on the instruction sheet. Update the instruction sheet annually.
13. Obtain the name and contact information as well as a business card of the U.S. government agent conducting the site visit.
14. Do not provide any document or information until immigration or employment counsel has been consulted and they have reviewed documents to be provided to the agency.
15. Know the parameters of the site visit and which U.S. government agency is conducting it.

16. Conduct an annual mock site visit at all employer locations to ensure preparedness for any actual site visit.
17. Review work visa petitions regularly to discard records that are not needed, and compare them against any payroll records to ensure timely updates.
18. Develop and implement a document retention policy to ensure timely disposal of documents.

Preparing for ICE I-9 Site Visits

All of the above can be used for ICE I-9 site visits or investigations. Additionally, be aware that these types of audits typically result from anonymous tips. As such, an employer should routinely train designated parties responsible for the I-9 completion and maintenance program. In this area of growing importance to the current regime, training is a key component of any corporate immigration compliance program. Further, an internal I-9 audit is an invaluable practice to help ensure compliance. It is also useful to check I-9 Central on <http://www.uscis.gov/i-9-central/> to ensure that the correct version of the I-9 form is being used and to keep abreast of any changes in employment verification program requirements. **Conclusion**

The current administration is pushing for stricter employment worksite compliance and with the possibility of immigration reform containing more rigid worksite compliance obligations, the above practice pointers are all useful methods of ensuring employer compliance at a relatively low cost.

Related Practices

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