

# Homeland Security Is at the Reception Desk: Increased Worksite Enforcement

LEGAL PERSPECTIVE FROM DUSTIN J. O'QUINN

An extraordinary amount of immigration-related worksite enforcement has occurred in the first quarter of 2017. Even more rumors have spread predicting the penalties for companies who sponsor foreign-born employees — and those who do not. The U.S. Department of Homeland Security (DHS) makes unannounced visits to companies across the country in the following scenarios:

**SITE VISITS:** The U.S. Citizenship and Immigration Service (USCIS) branch of DHS is the agency that approves employment-based petitions for nonimmigrant visa status such as the H-1B or L-1 for temporary professional workers. USCIS contractors called Fraud Detection and National Security (FDNS) officers conduct compliance reviews on companies that sponsor employees in these visa-status categories. These compliance reviews consist of unannounced site visits to the employee's worksite listed on the petition documents.

An FDNS officer arrives at the reception desk and asks to speak with the company representative who signed the forms filed with USCIS. The officer shows his or her badge and immediately begins an informal interview. She asks questions about a specific H-1B or L-1 employee in order to determine if the employment is consistent with information provided in the petition filed for that employee. The officer then asks to interview the employee privately and repeats those questions. She will follow up with a request for pictures of the employee's workstation to ensure worksite placement is appropriate, and a request for paystubs to ensure the employee's pay is consistent with Department of Labor requirements.

**FORM I-9 AUDITS:** The Immigration and Customs Enforcement (ICE) branch of DHS may arrive at a place of business to request a review of the company's I-9 forms for every employee. Formally, an I-9 audit is called an Administrative Inspection and begins when ICE serves a Notice of Inspection to the company representative. The company is allowed three days to provide the I-9s to ICE.

The inspection can last several months (often more than a year) and ICE will give the company 10 days to make corrections

on technical or procedural violations. If the company fails to provide a form I-9 for any employee or fails to correct a technical error, that violation becomes "substantive." Substantive violations can lead to fines of up to \$1,100 per violation. If the company knowingly hires an unauthorized worker or continues to employ a worker after discovering a lack of proper documentation, penalties can include fines of up to \$16,000 per violation and even prison time for executives and/or human resources managers.

If the auditors find no violations, ICE will issue a Notice of Inspection Results called a "compliance letter."

**IMMIGRATION RAIDS:** ICE may also arrive at a place of business in their capacity as the enforcement arm of DHS. A number of factors can lead ICE to begin an investigation of a company and its hiring practices, such as a finding of noncompliance during an I-9 audit, a "tip" regarding an under-documented employee, or the offsite arrest of an employee who admits to working at the company without authorization.

ICE will use the information collected in its investigation to apply for a search or arrest warrant for certain individuals. Armed officers will then make an unannounced visit to the worksite to search the premises, question company representatives, and review employee documents and personnel files. During this type of visit — often called a "sweep" or a "raid" — the company representative should review the warrant and contact the company's immigration attorney. Company representatives should never hide unlawful workers, or present false documents or information to an ICE officer.

Recent presidential executive orders instruct DHS to increase enforcement activities. Therefore, a higher number of site visits,



raids and audits are expected in 2017. Companies should focus on heightened compliance by ensuring documentation is properly completed, filed, retained and reviewed.

To learn more about changes to employment-based immigration practices under the new administration, and other topics and issues that may affect employers and employees now and in the future, please join Lane Powell and Associated Oregon Industries on Wednesday, April 26 at Hilton Portland for the 34th Annual "Best Practices for Best Employers" Labor and Employment Seminar. For more information about the program, please visit our website at [lanepowell.com](http://lanepowell.com). ■



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