

PUBLICATION

Increased Compliance and Enforcement Activities Under the Trump Administration: Are You Prepared?

August 11, 2017

In the last several months, announcements made by the U.S. Department of Justice, U.S. Citizenship and Immigration Services, and the Department of Labor all confirm the Trump Administration's aim to increase enforcement activities and compliance investigations. Employers in the U.S. must be prepared to protect themselves from liability and proactively ensure that their hiring practices are compliant and that best practices are in place for their immigration policies.

Given this heightened attention on immigration, employers should take several steps to correct any possible mistakes and reduce liability. Employers may choose to engage in several possible preemptive actions.

I-9 Self Audits

Immigration and Customs Enforcement (ICE) is expected to increase I-9 investigations; therefore, engaging in an internal I-9 compliance review is a practical way to ensure that technical errors are spotted and timely corrected. Employers must determine if they will review all I-9 forms or if a sample of I-9 forms will be audited, and employers should ensure that any subset of I-9s are carefully chosen to avoid discriminatory or retaliatory audits. Internal audits should not be conducted on the basis of an employee's citizenship status or national origin, or in retaliation against any employee or employees for any reason.

Regardless of the number of employees hired, all employers should establish clear and consistently applied policies on avoiding hiring unauthorized employees and terminating employees found to lack authorization. When conducting an I-9 audit, employers may discover I-9 forms that may be missing for employees, catch missing or incorrect information in various sections of the Form I-9, or even that the wrong version of the form was used at the time of hire.

Failure to comply with Form I-9 employment verification requirements, either inadvertently or knowingly, may result in civil fines, criminal penalties when there is a pattern or practice of violations, or debarment from government contracts. Taking proactive action to review and correct I-9s may allow an employer to avoid fines and severe penalties.

Preparing for Unexpected Site Visits

If an employer has hired foreign nationals working in H-1B or L-1 status, then it is possible that the Office of Fraud Detection and National Security (FDNS) may conduct an investigation to verify the consistency between the information on file as part of the individual's nonimmigrant petition and the actual on-site circumstances. FDNS works to detect immigration fraud and to ensure compliance with rules relating to work visa programs. FDNS site visits are usually unannounced; therefore, preparing for such surprise visits will provide an employer a significant advantage.

To prepare for such visits, employers should be sure to designate a single point of contact to meet with the FDNS officer and to address any employment related questions. Questions may include general inquiries about the business, number of employees and revenues. More specific questions relating to the sponsored foreign national's background, credentials and experience are likely to be asked, and employers should be ready to provide relevant documentation including organization charts, wage reports, W-2s and Forms I-9 for

the foreign national employee. Employers should also ensure that designated company representatives are aware of the possibility of site visits and that the representative has access to the foreign national's petition and employment data.

Maintain Best Practices Within an Immigration Program

Immigration compliance needs to be planned for in advance, especially in an era of heightened enforcement with increasing levels of global employee movement. Developing a compliant immigration policy will allow employers to avoid penalties and mitigate business disruption that may accompany immigration-related violations.

Companies who engage in hiring foreign national employees should prepare a formal compliance plan that is in writing. A solid immigration plan will establish clear hiring practices and procedures, designate the appropriate parties that will be involved in foreign national hiring, create timelines for the preparation of various immigration applications and petitions, and ensure consistencies within the company. A centralized policy also allows the immigration process to be easily measured, both in time and in cost. A centralized model ensures the highest level of consistency, simplifies expat administration and eliminates redundant processes.

A rapidly increasing international workforce makes it critical that employers develop appropriate workflows and create internal policies to deal with the limitations of immigration laws and to ensure there is no compromise when it comes to compliance. Increased enforcement activities under the Trump Administration continue to be expected, and we strongly encourage employers to proactively assess and review their immigration activities and programs to protect themselves from liability.