

# Vigorous Immigration Law Enforcement Is Here: I-9 Inspections, Site Visits, and More

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President Trump's new administration takes charge this week with a renewed focus on enforcing federal immigration law. In fact, as explained in today's companion article, one of President Trump's first action items on Inauguration Day was the issuance of a series of executive orders relating to immigration policy. Employers should therefore review their operations and identify steps to improve compliance and prepare for possible government visits. Here are a few key areas to consider.

## Form I-9 Inspections

Under the new administration, Immigration and Customs Enforcement (ICE) will increase its scrutiny of employers' compliance with [Form I-9, Employment Eligibility Verification](#) by initiating a higher number of I-9 inspections. Some inspections will be targeted, and some will be random to encourage I-9 compliance among employers. As to targeted inspections, ICE likely will focus initially on employers operating in areas that may affect infrastructure or national security (e.g., electrical grid, other energy, transportation, some technology). ICE also may target employers in sectors that historically have employed higher numbers of unauthorized individuals. These sectors include hospitality, food processing, manufacturers that heavily rely on temporary staffing agencies, retail, and certain construction and agriculture operations.

Poor I-9 compliance can lead to significant fines. The United States Department of Homeland Security (DHS) increases fine levels annually. On January 2, 2025, DHS announced the following new [I-9 fine schedule](#):

- I-9 Paperwork Violations: \$288 to \$2,861 per Form I-9
- Knowingly Employing Unauthorized Alien (First Offense): \$716 to \$5,724 per individual
- Knowingly Employing Unauthorized Alien (Second Offense): \$5,724 to \$14,308 per individual
- Knowingly Employing Unauthorized Alien (Third or More Offense): \$8,586 to \$28,619 per individual

The federal government will announce additional I-9 related fine increases in the weeks to come. These will include penalties for violating the antidiscrimination provisions of the I-9 rules, such as for document abuse (asking for specific documents or for more or different documents after the employee already has presented qualifying I-9 documents).

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To defend against the risk of I-9 penalties, employers should conduct periodic training of employees and ensure that only well-trained employees handle I-9 duties. Employers also should plan and conduct periodic internal I-9 audits. ICE may consider an employer's internal audits as a mitigating factor when assessing fines. While internal I-9 audits can be helpful, they must be correctly completed. Flawed internal audits can result in additional mistakes and higher fines. Some of the mistakes may lead to complaints of discrimination to the United States Department of Justice's Immigrant and Employee Rights (IER) division.

For information, please see our recent post with [I-9 compliance tips](#). Guidance also can be found in the government's I-9 [Handbook for Employers](#) and at [I-9 Central](#).

## Site Visits

Immigration-related government visits to employer facilities are likely to increase. Among others, United States Citizenship and Immigration Services (USCIS), ICE, and the United States Department of Labor (DOL) may soon be visiting. These visits may occur with or without advance notice. They may occur randomly or based upon tips that an agency has received regarding a particular employer.

### *FDNS Visits*

USCIS is likely to increase the number of [Fraud Detection and National Security \(FDNS\) visits](#) related to an employer's recent immigration cases. Most FDNS visits are unannounced and are related to H-1B specialty occupation and L-1 intracompany transfer cases. FDNS Officers usually visit the employer in the months following favorable decisions on cases. In doing so, the Officers ask to interview the person who signed the immigration petition on behalf of the employer. FDNS Officers usually will not have a subpoena or warrant. USCIS asserts that the employer agreed to these visits when it signed and submitted the immigration petitions and applications. If the employer refuses to cooperate with the FDNS site visit, the Officers will note the employer's response and refer the matter to a higher level within USCIS. USCIS may reopen the immigration case for further review or to issue a Notice of Intent to Revoke the approval. In some situations, USCIS may refer the matter to ICE to investigate.

If the site visit proceeds, FDNS Officers will ask questions about the employer's business operations, the business locations, the number of employees, the job title and job duties of the H-1B or L-1 employee named in the immigration case, the employee's regular hours of work, and employee's current rate of pay. The FDNS Officers may ask to see documents to verify the active business operations and the employee's rate of pay. The Officers also may ask to speak with the foreign employee.

### *STEM OPT Site Visits*

ICE may increase visits to employers that employ foreign students based upon STEM Optional Practical Training ("STEM OPT"). ICE often will notify the employer a few days in advance of the upcoming visit, unless ICE has received information suggesting a serious violation. ICE will have a copy of the employer's [Form I-983 Training Plan](#) and seek to confirm that the employer is following the plan. ICE also may review the employer's compliance with the [E-Verify program](#).

### *Best Practices to Prepare for Immigration-Related Site Visits*

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Employers that are commencing immigration cases or are submitting STEM OPT training programs must prepare for this increased scrutiny. Here are a few tips:

- Review **even more carefully** all future submissions to USCIS, DOL, or ICE, and confirm the accuracy of the employer's representations before signing and filing.
- Review again the approved immigration applications, petitions, or active training programs that provide the employer's basis for employing any current employees. Confirm that the company is complying with the representations made to the federal government (business information, job title, job duties, hours, rate of pay, worksite location, etc.). File an amended application, petition, or training program if appropriate.
- For H-1B cases, review the related Labor Condition Application (LCA) Public Access File and make sure it is up to date and contains all of the required documents. *(In addition to FDNS, the DOL may conduct a site visit to review LCA compliance. The DOL usually will give the employer advance notice.)*
- For E-Verify employers, review your organization's Memorandum of Understanding and compliance with the E-Verify program.
- Alert the receptionist that no government visitor should be given access to the facility beyond the lobby and that in-house counsel or the Human Resources manager should be contacted immediately should such a visitor arrive.
- Obtain the business card of the government officials who visit. Call counsel before admitting the government officials beyond the reception area. In most circumstances, counsel may participate by phone or in person during the government's interview of the employer.

#### *Facility Wide Enforcement Actions (Worksite Raids)*

In circumstances where the employer is suspected of employing a high number of unauthorized individuals, ICE is more likely to conduct enforcement across the employer's facility (surround the facility and initiate a worksite raid that may result in numerous arrests of employees suspected to be unauthorized). ICE will come with a warrant, and the employer is usually unable to stop the worksite action.

Employers that encounter ICE initiating such action should do the following:

- Ask to speak with the ICE Officer or Special Agent in Charge.
- Ask the ICE Officer for his or her business card, badge number, and the warrant to confirm the scope of what ICE is permitted to search or seize.
- Call counsel immediately and put counsel in contact with the ICE Officer or Special Agent in Charge of the raid.
- If you are comfortable doing so, ask the ICE Officer to observe ICE's actions within the facility. ICE may deny the request and instruct the employer's management to remain in a certain location. Occasionally, shadowing the Officer in Charge is permitted. Do not obstruct or otherwise take steps that could constitute interference with the operation.
- Ask to make copies of any documents seized by ICE and for an inventory of the items taken.
- Follow up further with counsel regarding legal issues and potential employer liability arising from the raid. Develop a plan to cover positions that may be open following the raid.

## **Conclusion**

Employers should be vigilant in complying with all employment-related immigration laws. Many of these laws contain compliance and antidiscrimination provisions.

National Law Review, Volume XV, Number 21

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