

PUBLICATION

ICE Director Confirms Significant Increase in Workplace Immigration Enforcement

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Thomas Homan, Acting Director of U.S. Immigration and Customs Enforcement, said his agency has plans to increase workplace immigration enforcement. In a speech to the Heritage Foundation in Washington, D.C. on Tuesday, Homan confirmed that enforcement activities will increase up to four to five times the current levels. Homan also stated that ICE will target employers who knowingly hire undocumented immigrants as well as the employees who are in the U.S. without the necessary documentation. The increase in enforcement activities will include workplace investigations, I-9 audits, and even large-scale workplace raids of employers suspected of employing illegal immigrants.

Heightened enforcement activities have been a key focus of the Trump Administration. All employers should remain vigilant in their hiring practices and should engage in periodic and comprehensive internal I-9 audits, provide training and guidance to managers and supervisors for the proper hiring and employment of foreign national workers, and develop a corporate compliance policy on employment eligibility verification. 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.

I-9 Self Audits

Failure to follow the appropriate procedures in an I-9 verification process can lead to civil fines, criminal penalties, and possible debarment from government contracts. Engaging in an internal I-9 compliance review is a practical way to ensure that technical errors are spotted and timely corrected.

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. An I-9 audit will allow for employers to proactively address any discrepancies or errors in I-9 completion. Taking steps to ensure an effective, compliant I-9 program will not only alleviate unnecessary liability, but it will also go a long way in establishing a good faith defense in the face of an ICE audit, which can further reduce civil fines.

Review Policies and Procedures

Companies and executives face the largest risks from responsibility for knowledge of lower level managers about employment of unauthorized workers and "willful blindness" to the implications of decentralized and haphazard practices. Companies should consider installing policies that require managers to report upward or to a compliance officer any knowledge about unauthorized employment. Immigration-related components to larger corporate compliance policies should be considered.

Proactively Prepare for a USCIS Site Visit

Being prepared for a worksite visit will help to minimize disruption and provide safeguards to the employer and workers. To prepare for a worksite visit, 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.

Conclusion

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. Baker Donelson's Immigration Group offers robust compliance management and audit representation for employers in any industry, and our fixed fee audits are designed to provide corrective measures for any improperly completed I-9s, assess vulnerability in a company's immigration program, and address any potential exposure to risk.