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IMMIGRATION NEWSFLASH!

SURPRISE SITE VISITS TO EMPLOYERS OF FOREIGN WORKERS

The U.S. government is increasing its enforcement actions against companies that employ foreign workers. This represents a dramatic shift in the government's focus from past administrations. From small start-ups to large multinational corporations, businesses in a variety of sectors and geographical areas are being visited by government agents on a daily basis. This *Immigration Newsflash!* is intended to provide background information about these visits and alert you to some of the possible issues that can arise during a visit.

Who conducts a site visit?

The government agencies most often involved in immigration-related visits are the Department of Homeland Security (through the U.S. Citizenship and Immigration Services as well as Immigration and Customs Enforcement) and the Department of Labor. Site visits, which are **usually unannounced**, range from a single investigator requesting an interview with a human resources representative and foreign worker, to full-scale raids supported by dozens of officers.

How and why are businesses selected for a site visit?

Some businesses are selected through a random audit process, while others are visited following a specific complaint made by a current or former employee. Some visits are part of a larger investigation into the overall business activities of a company, while others are generated by information in the media. As a general statement, the government agencies conducting visits typically want to ensure that companies are following the immigration laws of the United States. While this could simply mean confirming an individual's ability to work in the U.S. by focusing only on the accuracy of information provided in a particular immigration application, some visits extend far beyond a specific individual and involve investigating the legal status of several workers or even an entire workforce.

What types of immigration issues can be covered during a site visit?

The specific focus will depend largely on which government agency is conducting the visit, and whether the company was randomly selected or visited as part of a larger, targeted investigation. The following is a general (but not exhaustive) list of possible areas of focus:

- U.S. Citizenship and Immigration Services (USCIS): Visa fraud, specifically focusing on H-1B and L visas.
- Immigration and Customs Enforcement (ICE): I-9 compliance/unauthorized employment, identity fraud.
- Department of Labor (DOL): Labor condition application (LCA) compliance (within the H-1B context), permanent labor certification (PERM), I-9 compliance/unauthorized employment.

What happens during a site visit?

Again, this will depend on the purpose of the visit. If an officer is investigating a specific worker, the officer normally will ask to meet with the company's representative who signed the application papers. During the meeting, the government officer will ask detailed questions about the company's business activities, as well as the individual's job title, job requirements, work location, salary and more. It is likely that the officer will request corroborating documentation. The officer will then ask the same questions of the foreign worker (to ensure accuracy and consistency). If the officer is satisfied, the visit normally ends and the investigation is closed. If the officer is concerned about discrepancies or inconsistencies in the responses or evidence provided, the government may continue (and possibly expand) the investigation, and can ultimately pursue civil or criminal penalties.

In cases where the government is investigating more than one worker (for example, a company's entire H-1B workforce), the government officer may request interviews with the company representative(s) who signed the applications as well as all H-1B visa holders, and ask for documentation relating to all H-1B workers, including organizational charts, pay statements, LCA compliance materials and more.

In the event of a full-scale raid, officers will normally secure the premises to prevent anyone from leaving. Assuming they have a search warrant and/or subpoena, the officers may confiscate computers, files and other records, interview workers and managers, and possibly even arrest individuals who cannot (or choose not to) verify their immigration status, or who are otherwise alleged to be in violation of the immigration laws.

What should a company do when a government officer arrives at a worksite as part of a site visit?

Whenever possible, contact our office immediately! At a minimum, company personnel should be alerted to this possibility and should know exactly who to contact internally. Company representatives who sign immigration applications should be prepared for a random visit, and should appoint at least one other company official with knowledge of the company's immigration matters as a designee to meet with a government officer in the event the primary contact is unavailable.

How can you lower the chance of a site visit or the possibility of penalties?

It is not possible to prevent a company from being randomly selected for a site visit. However, since reports from across the country indicate that many complaints leading to investigations and

site visits are made by disgruntled employees (both current and former), maintaining a positive working environment is one key to lowering (though not eliminating) the chance of a site visit.

In this era of enhanced workforce enforcement, every employer must be able to document the legality of its workforce and compliance with the law at all times. Proper and timely recordkeeping is essential, as are regular reviews of the company's immigration-related policies, procedures and documentation.

Any questions?

If you have any questions about site visits, or would like our assistance in reviewing your compliance efforts, please contact one of the attorneys in our Immigration Practice Group. In addition to the following e-mail addresses, we can be reached at (212) 687-4900.

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