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Considerations for Immigration Workplace Visits Under the New Administration

In the current climate of heightened immigration enforcement, employers must navigate various challenges, including unannounced USCIS administrative site visits, Form I-9 audits, and ICE workplace raids. Each of these processes aims to ensure compliance with federal laws but requires different strategies to address effectively.

Employers should review their legal rights and develop formal written procedures to be prepared should there be a site visit. These site visits have the potential to disrupt business operations and impact employees. Experienced immigration counsel can help ensure you are prepared for these situations. The following is an overview of considerations for employers with a foreign national workforce.

USCIS Onsite Inspections

USCIS onsite inspections by the FDNS unit (Fraud Detection and National Security) are conducted to verify compliance with nonimmigrant worker visa petitions. These inspections ensure that named foreign nationals, job duties, compensation, and worksite locations match the details provided in the petition.

- **In advance:** To prepare for these inspections, employers should designate a primary and alternate contact familiar with the company's non-immigrant workers and their position details and immigration status. Conducting internal reviews of non-immigrant employees is crucial to ensure their job duties, worksites, and salaries are consistent with the petition representations. Additionally, maintaining accurate and up-to-date Public Access Files (PAFs) separate from other personnel records is essential.
- **During an inspection:** The designated representative should greet the officer professionally, verify their credentials, and escort them to an office or conference room. It is important to accompany the officer throughout the visit, provide only the information specifically requested, and facilitate interviews with non-immigrant workers if necessary, ensuring they are not interviewed alone.
- **After the inspection:** Keeping detailed records of the visit, including the inspector's name, title, agency contact information, date and time of the visit, questions asked, documents requested/provided, and any photographs taken or areas visited, is vital. Employers should notify legal counsel immediately to discuss the inspection details and address any issues.

Form I-9 Audits

Form I-9 audits, conducted by ICE, focus on verifying employment eligibility documentation. Employers must ensure all I-9 forms are completed accurately and on time, including proper completion of Sections 1, 2, and 3, and timely re-verification for employees with temporary work authorizations. Regular internal reviews of I-9 records are recommended to ensure compliance.

- **Review process:** The I-9 audit process begins with a Notice of Inspection (NOI), giving employers typically three business days to gather and present the required Form I-9 documents. Employers must provide I-9 forms for all current employees and some past employees, along with additional documents such as payroll records and employee lists. ICE reviews the I-9 forms for completeness, errors, unauthorized workers, and recordkeeping. Upon receipt of an NOI, it is crucial to contact legal counsel immediately to review and prepare for the audit and address any issues.
- **After the review:** ICE may issue findings, including Notices of Compliance, Technical or Procedural Failures, Suspect Documents, Discrepancies, or Intent to Fine. Employers may correct minor violations within 10 days or contest fines through a hearing before an Administrative Law Judge. Penalties can range from hundreds to thousands of dollars per violation, with potential criminal charges for knowingly hiring unauthorized workers.

ICE may conduct follow-up audits to ensure ongoing compliance. Counsel can assist with responding to the audit request and ensuing findings.

ICE Raids

ICE raids target suspected unauthorized workers and enforce immigration laws. Employers should designate a trained point of contact for interactions with ICE agents and conduct regular training sessions for employees on their legal rights. This includes the right to remain silent and the right to refuse a search without a valid warrant, along with a proper understanding of the distinction between administrative and judicial warrants. Maintaining up-to-date employment verification records and emergency contact information is also essential.

In addition, employers should consider whether there are privacy laws unique to their industry that require reconsideration of how records are maintained to avoid the unnecessary disclosure of personal information. Employers who use staffing agencies should also review their contracts to make sure appropriate precautions are in place to confirm workers' employment authorization.

- **During a raid:** The designated representative should request the officer wait until they can connect them with counsel, accept the search warrant but not consent to the search to preserve the right to challenge it later, and verify the warrant's details to ensure the search is conducted within its limits. Documenting the search, including the names of supervising ICE agents, items seized, and areas searched, is crucial. Employers should not provide access to non-public areas without a warrant or give statements on behalf of the company before consulting with counsel. Employees should be advised of their rights but not instructed not to answer questions.
- **After a raid:** Be sure to contact legal counsel immediately to review and assess the raid to determine next steps.

More helpful tips can be found from the American Immigration Lawyers Association in its "[Know Your Rights](#)" and "[Employer Rights & Responsibilities](#)" fliers. For further information or assistance, please contact our dedicated immigration team attorneys [Fatima Khan](#), [Carlos Ortiz](#) or [Martha Mendez-Fischer](#).

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