

Compliance Check 2020

October 2019

Welcome to the tenth issue in our series, *Compliance Check 2020*, a monthly publication that will help you perform a self-assessment of your company's compliance with federal, state and local employment laws and regulations. In this edition, we help you evaluate your immigration compliance practices.

With the current presidential administration emphasizing immigration-related inspections, preparation is key to a successful response. This publication will address three common types of government audits and compliance inspections related to immigration: I-9 Notices of Inspection, Department of Homeland Security H-1B site visits and Department of Labor H-1B audits. Another type – ICE (Immigrations and Customs Enforcement) raids – are not as common and will not be discussed here. While each has its own characteristics, many principles for response exist across the board.

Given the typically short response time to produce information or documents in these inspections, training your employees and conducting internal audits are crucial steps to placing your company in a position to respond efficiently with minimal liability. Here are some questions you should consider to determine if your company is likely prepared:

- ☑ **Are your employees trained to accurately complete forms? Are your records in order?** When a company receives an I-9 Notice of Inspection (NOI), the government requires that I-9s be turned over in three days, which does not allow enough time to get things in order or make permitted corrections to the documentation. Ask yourself these questions to assess your level of preparedness: Has your company ever had an external I-9 audit? Does it complete regular internal I-9 audits? Will you be able to quickly gather all I-9s for

the location identified in the NOI? Have you regularly provided I-9 training to the company representatives responsible for completing the forms to minimize errors? Is your company tracking when foreign national workers' employment authorizations expire?

Similarly, at a DHS H-1B site visit, government agents typically arrive without notice. Are the LCA compliance files accessible with all needed information?

- ☑ **Does the employee at the point of access for your organization (security desk, receptionist, mailroom, etc.) know what steps are needed?** The first point of contact needs to be prepared if a government official enters the premises or a mailing arrives from a government agency. Who should they call? Where should the official be asked to wait? Are there questions they should ask to determine the possible severity of the situation? If an NOI is received by mail, does the individual opening it know who to contact (e.g., human resources, legal department) and the urgency necessary in doing so?
- ☑ **Do you know where your sponsored employees are and what they are doing?** H-1B employees have work authorization that is employer-specific, location-specific and position-specific. A change in any of these factors can require an amendment. Many times, your human resources or legal department is not advised of these changes until after the fact, which can create

significant issues for your company and the foreign national. Is there a company representative designated to address immigration-related notifications and a policy requiring foreign nationals and managers to advise this individual of any changes so he or she can determine what action, if any, is needed? Are LCA public access files being maintained and updated as necessary with the required documentation? Do on-site personnel know where these files are kept in case your company receives a request to view them? Do employees know how their positions are described so their answers are consistent if an H-1B site visit occurs and they are questioned by government officials to confirm the validity of their H-1B petitions?

- ☑ **Is your company aware if contractors have placed sponsored workers at company locations?** If your company does not sponsor H-1B foreign nationals, you may think there is no reason for immigration officials to show up at your door, but this is not necessarily the case. If a contractor places a foreign national worker at one of your company's locations, DHS may arrive to perform a site visit. Thus, you should be aware of any such placements by contractors, consider the situations outlined above and take steps to be prepared for them. Ask yourself: Does the company require (ideally contractually) that contractors notify it of any H-1B individual placed at a company facility? Is your company cooperating with the required LCA posting? While it is important to avoid situations suggesting joint employment in all cases, it is even more important for H-1B workers, as the sponsor must have the employer/employee relationship with the worker. Thus, it is critical that your company take steps to avoid factors that could suggest joint employment.

FOR MORE INFORMATION

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