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Preparing Your Business to Survive the Workplace Immigration Enforcement Challenges Under Trump 2.0

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Speakers



For more than 40 years Mary E. Pivec has counseled employers dealing with government regulations, investigations and enforcement actions. Rated by peers as AV Preeminent in the Martindale Hubble Attorney Survey, Mary is recognized as one of the most experienced and knowledgeable attorneys in the U.S. in the field of immigration-related worksite enforcement and compliance. She has represented employers in over 100 Form I-9 inspections, immigration-related discrimination investigations, and OCAHO proceedings, has testified as an expert on I-9 compliance and immigration-related discrimination claims in civil and criminal litigation, and has trained and counseled hundreds of managers and human resource officers on immigration compliance issues. Mary also represents employers in DOL H-1B/LCA enforcement audits and in appeal proceedings before DOL administrative law judges and the DOL Administrative Review Board. Mary is a 1981 graduate of the University of Maryland School of Law and practices with the firm of Pivec & Associates, PLLC, located in northern Virginia. She is a Fellow of the College of Labor and Employment Attorneys and has been listed annually in Best Lawyers in America in the field of Immigration Law since 1990. Mary also served for nine years on the AILA Board of Governors and on numerous AILA liaison and advisory committees dealing with the issues surrounding immigration worksite enforcement and business immigration compliance.



Becki L. Young, co-founder of Grossman Young & Hammond, is a seasoned business immigration attorney with over three decades years of experience in the field. She has facilitated the sponsorship of foreign professionals, trainees, interns and individuals of "extraordinary ability." She regularly provides immigration law advice to clients in a broad range of industries.

Ms. Young is an active member of the American Immigration Lawyers Association (AILA). She frequently speaks at legal, business and hospitality conferences, and regularly contributes insight through published articles and commentary. She is highly recommended by Chambers & Partners and recognized as a Leading Legal Practitioner in Corporate Immigration by Who's Who Legal. Grossman Young & Hammond is rated Tier 1 National and Washington, D.C. for Immigration Law by US News & World Report / Best Lawyers. She is also recognized as a "Best Lawyer" in immigration by Washingtonian magazine.



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What is the most recent indication of the Administration's intent to implement a massive uptick in I-9 audits?



Which industries are most vulnerable in our area?

- Construction/Roofing
- Restaurants/Food Services/Food Processing
- Hospitality Services
- Landscaping/Grounds Maintenance
- Cleaning/Maintenance Services
- Warehousing/Distribution/Delivery
- Manufacturing/Assembly
- Tooling
- Staffing/Temp Help
- Agriculture



Top 3 recommendations to employers in targeted industries:

1. Engage counsel before a raid occurs to assist in developing an effective raid action plan, provide staff response training and advise on immigration status and document review issues.
2. Conduct an internal I-9 compliance audit to identify and correct errors and omissions and ensure readiness for production on three days notice.
3. Terminate or suspend employees who fail to properly complete an I-9 form and present acceptable documents.



How does ICE notify employers of the intent to audit their I9 files?

- Notice of Inspection (NOI)



What steps do you recommend to employers to conduct an internal I-9 compliance audit?

1. Review and refer to the I-9 Employer Handbook for guidance before and during the audit process.
2. Ensure fully completed Form I-9s for all employees (present and past within retention period).
3. Ensure Section 1 is fully completed, signed, and dated solely by the employee and the Translator/Preparer (as necessary).
4. Ensure that the document verification part of Section 2 has been properly completed and annotated to comply with the COVID-virtual reverification rules, as applicable.
5. Ensure that the recorded documents are acceptable for employment verification and identification purposes.
6. Ensure that the employer representative has fully completed, executed, and dated Section 2.
7. Ensure that Section 3 (Reverification) has been completed for all employees before a temporary work authorization document expires.
8. Do not use E-Verify to verify the employment eligibility of current employees.
9. Contact your I-9 vendor in advance of a NOI to ensure production readiness and compliance with the electronic I-9 regulations.



What should employers know about the new 540-day EAD auto extension rule?

- Consult <https://www.uscis.gov/eadautoextend> for eligibility categories and document verification requirements and Automatic Extension Eligibility Calculator.
- Employees present in Temporary Protected Status (categories A12/C19) are also subject to registration and continued country designation rules. Seek legal advice as required regarding employment and verification decisions.
- F-1 Students with a timely filed, pending STEM/OPT extension application are only eligible for and auto extension of up to 180 days.



**Why should an employer bother to audit and correct I-9s before being served with a NOI?
Can't it be done after a NOI is served?**



What are the current fine levels for violations occurring after November 2, 2015?

- I-9 paperwork violations: \$288–\$2,861 per Form I-9 violation
- Knowingly employing unauthorized workers:
 - First offense: \$716–\$5,724 per violation
 - Second offense: \$5,724–\$14,308 per violation
 - Third or more offense: \$8,586–\$28,619 per violation



How far back does an employer have to go in reviewing its I-9 inventory?



If an employer is enrolled in E-Verify, do they have to worry about auditing their I-9 files?



Tips for Avoiding Liability

1. Treat people equally.
2. Allow each employee to choose which documents to present from the Lists of Acceptable Documents.
3. Don't refuse to accept a document or refuse to hire someone because his/her document has a future expiration date.
4. Don't request specific documents from someone to create an E-Verify case or because of an E-Verify Tentative Nonconfirmation (mismatch).
5. Don't request that someone who presented an unexpired Permanent Resident Card present a new document when the Permanent Resident Card expires.
6. Don't request specific documents for reverification.



What advice do you have for employers in industries with large numbers of immigrant workers ?



What are immigration agents authorized to do when they visit a worksite?



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How should employers protect their rights and avoid prosecution during an ICE raid?

1. Ensure search warrant is valid. Send a copy of the warrant to your attorney.
2. Take a photo of the warrant or record the name of the supervising ICE agent and the name of the U.S. attorney assigned to the case.
3. Have at least one company representative follow each agent around the facility.
4. If agents presented a valid search warrant and want access to locked facilities, unlock them.
5. Request reasonable accommodation, as necessary.
6. Do not block or interfere with ICE activities or the agents.
7. Object to a search outside the scope of the warrant.
8. Protect privileged materials.
9. Ask for a copy of the list of items seized during the search.
10. Company representatives should not give any statements to ICE agents or allow themselves to be interrogated before consulting with an attorney.
11. You may inform employees that they may choose whether to talk with ICE, but do not direct them to refuse to speak to agents when questioned.
12. Do not hide employees or assist them in leaving the premises.
13. Remember the health and welfare of your employees.



What about employees – do they have any rights while a raid is ongoing?

- Employees have the right to remain silent and the right to an attorney.
- Ask if your employees are free to leave. If they are not free to leave, they have a right to an attorney.
- Employees do not need to answer questions about their immigration status, where they were born, or how they entered the United States.
- If ICE tries to determine your employees' immigration status by asking them to stand in groups according to status, they do not have to move, or they can move to an area that is not designated for a particular group.
- Employees may refuse to show identity documents that disclose their country of nationality or citizenship.
- If employees are detained, be sure their families are contacted and any money owed to the employees is paid.



What can an employer expect following a raid on the workplace?



What other immigration enforcement activity is possible under the Trump Administration?

- Project 2025 includes an increase in site visits by CIS agents in the Fraud Detection and National Security Directorate. Reissuance of the **Buy American/Hire American Executive Order**.
 - Goal is to protect the jobs of US workers.
 - Limit visa issuance to the most highly skilled and highly compensated foreign workers.
- To identify violations of the L-1 and H-1B regulations, the Administration is expected to increase the number and intensity of site visits by FDNS agents, who may be paired with DOL WHD agents. FDNS agents and DOL WHD agents do not need a warrant to conduct an investigation.

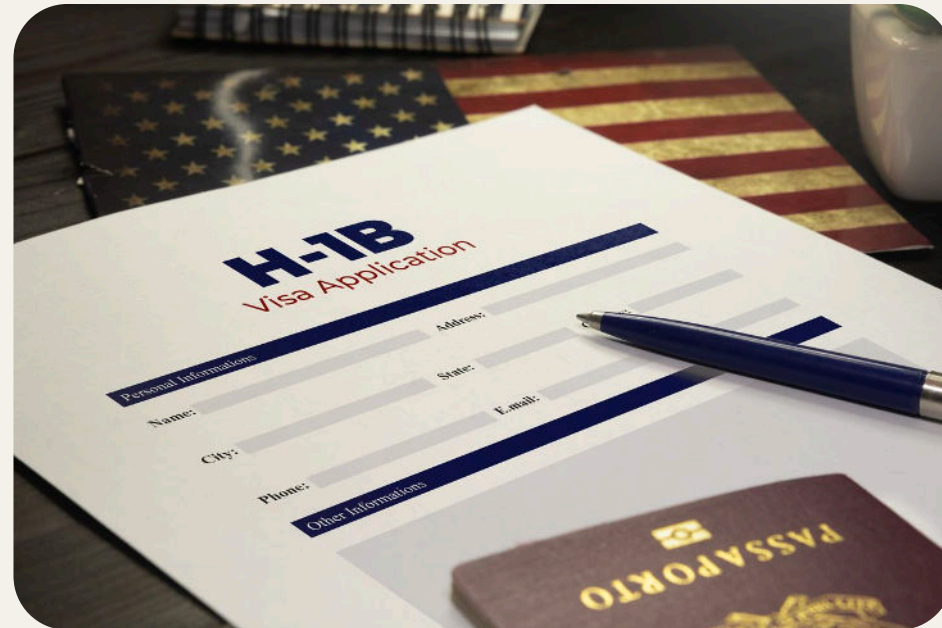


How should employers prepare for potential site visits?

1. Preparation is critical.
2. Have an action plan in place for each work location designated in the employer's H-1B petitions.



What advice do you give employers who place L-1 and H-1B workers at third party worksites?





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Thank you!

Questions?

