

H-1B and L-1 Employer Alert

USCIS Intensifies Fraud Investigations and Worksite Audits

Since March 2005, H-1B and L-1 employers pay a \$500 fraud prevention fee with every H-1B or L-1A or L-1B petition that is filed with USCIS. USCIS, through the Fraud Detection and National Security (FDNS) division, has engaged outside contractors and private investigators to conduct approximately 25,000 site visits to petitioners. In addition to verifying the validity of information contained in H-1B and L-1 petitions, FDNS investigators are apparently using information collected during worksite visits to assist USCIS with developing a fraud detection database. FDNS investigators collect information to develop profiles of the types of organizations that have records of good faith use of immigration programs and records of immigration compliance, and also to identify factors that could be a sign of fraud. Many of these random, unannounced site visits are expected to occur after approval of the H-1B or L-1A/L-1B petition or extension. In fact, many universities and employers in all industries have reported such worksite visits in recent weeks.

Based on anecdotal reports, FDNS investigators typically ask to meet the H-1B or L-1 worker and see some sort of identification to prove that the employee is who he says he is. FDNS investigators also ask to meet with someone from HR to confirm the H-1B or L-1 worker's date of hire, title, work location and salary information. FDNS investigators typically work from a script of standard questions that compare the information in the petition to the information received at the worksite. They have also been instructed to take photographs of the company office building to confirm the existence of the business.

Another particular focus of H-1B investigations have involved companies employing less than 25 employees, or generating less than \$10 million in gross revenues, or that have been in operation for less than 10 years. USCIS conducts these unannounced worksite visits to ensure compliance with the H-1B program and to verify that the company is a real operating business entity and that the person being sponsored is a "legitimate" employee. This includes verification that the H-1B employee is:

- actually working at the designated location
- being paid prevailing wage
- performing the job duties listed in the H-1B petition filed with USCIS.

This may also include an inspection of H-1B public access files or any PERM audit files.

Therefore, if there are any material changes to the job duties being performed by the H-1B employee, including promotions, transfers, changes in job locations or additional

work sites, please contact our office to verify if it is necessary to file an amended H-1B petition with USCIS to reflect these changes.

What Should Employers Do?

Any employer who files nonimmigrant visa petitions for foreign workers, must be prepared for USCIS' random worksite visits. An investigation response plan should include everyone from upper management down to receptionists, all of whom should be fully aware of the proper steps and chain of communication necessary if and when such an event occurs. The company must have a designated official to handle such an occurrence and also determine in advance, what sort of information or documents the company will provide, if any, to a FDNS investigator without a warrant. Also, an employer should always ask for the investigator's identification and business card. The designated person should contact immigration counsel immediately.

With the increase in audits and investigations, every employer must have a corporate immigration compliance plan that includes internal audits of I-9 practices, compliance with H-1B public access files, PERM audit files to ensure that all immigration documentation is maintained properly and in an organized manner.

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Please contact your Wolfsdorf Immigration Law Group professional if you have any questions about conducting internal I-9, H-1B, L-1 or PERM audits or if you have questions or concerns about worksite investigations.