

verification policies and procedures;

- Subject-matter testing of responsible staff members;
- Instituting best practices on record retention;
- Correcting errors appropriately;
- Ensuring that non-discrimination principles are followed to avoid Civil Rights Act violations;
- Considering process management tools such as electronic I-9 software platforms; and
- Considering the pros and cons of using E-Verify.

2) Prepare for unannounced work-site visits by the Office of Fraud Detection and National Security if you have employees working in H-1B or L-1 status. FDNS generally conducts its investigations by making unannounced visits to employers and asking to speak with the individual who signed the employer's petition and to the beneficiary to determine if everything in the petition is accurate. It will focus on job descriptions, job locations, salary, education requirements, and the like. The investigator may want to tour the premises, take photographs, and ask for a broad range of documents to verify the accuracy of all statements, including financial documentation and even information that may go beyond the petition itself, to information about immigrant visa applications, other office locations, layoffs, and hiring policies. If the FDNS is seeking more documents or information than can easily be compiled during the visit, the employer should explain that they will forward the documents within a reasonable time. The FDNS and the USCIS take the position that by submitting petitions, the employer consents to on-site visits and that no subpoena or warrant is necessary for the visits themselves or for requests for information and documents. While site visit cooperation is not mandatory and may be refused, the refusal of a site visit may lead to negative information being sent to the USCIS in connection with the visit that could result in a revocation of the case in question and other possible consequences or scrutiny. The employer and employee are not required to answer every question asked. An employer should ask to consult with counsel prior to answering questions if the questions do not seem relevant.

3) Prepare for possible ICE raids. ICE raids can lead to potential civil and criminal charges and each situation is different. It is therefore essential to consult with counsel on these matters. The general overview below provides employers with basic things to consider in advance of a possible ICE raid.

- As with unannounced FDNS worksite visits, identify a first responder and a back-up who initially will interact with the ICE officer(s) and accompany the officer(s) while they are on the premises.
- Advise employees that if a raid occurs, they should not block, interfere, or engage in any hostilities with the ICE officers as they conduct their activities.
- Inform employees that they have a right to talk, and not talk, with ICE officers if they like. However, do not direct employees not to speak to agents when questioned. Suggest they can contact the American Civil Liberties Union (ACLU) if they have any questions about their rights.



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If a raid occurs, remember:

- ICE needs a search warrant. Be sure to ask to see the warrant, examine it to see if it grants entry to the premises and that it is properly signed.
- Contact counsel immediately, but ICE will not delay the raid to wait for the attorney to arrive.
- Do not engage in any activities that could support a harboring charge, such as hiding employees, aiding in their escape from the premises, providing false or misleading information, denying the presence of specific named employees, or shredding documents.
- After the raid, contact the families of any detained employee, debrief staff, and make notes for counsel marked "Confidential Attorney Client Communication-Prepared at Request of Counsel."

It is critical that employers prepare for the "new normal" and the challenges they are likely to encounter in their operations as a result of more inspections and raids as well as increased scrutiny of visa petitions, among other changes. Only by formulating new business strategies on staffing, talent acquisition, and collaboration with subsidiaries, affiliates, or partners abroad will employers be able to reduce potential immigration risks and liabilities.

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