

Immigration Alert: DHS Site Visits and Inspections - Be Prepared

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From time to time, the Department of Homeland Security (DHS) conducts site visits at the offices of employers petitioning for temporary work visas on behalf of their employees. These visits are funded by the \$500 “anti-fraud” fee that is a component of the filing fee for H-1B and L-1 visas. These site visits are currently on the rise, and it is important to understand what DHS is checking for and how to respond when a DHS officer or designated agent knocks on your door.

What is the Government’s Objective in Conducting Site Visits?

Typically, DHS wants to confirm that the employer is a bona fide organization that knowingly filed the visa petition for its employee, and that the employee is actually working for the employer in the position that was the subject of the visa petition, and at the wage promised in the petition.

Who Comes Calling on Behalf of DHS?

Site visits are conducted by U.S. Citizenship and Immigration Services (USCIS) employees or third-party contractors hired by USCIS to conduct the site visits. It is important to verify and record the identity of anyone claiming to be a government representative or agent. If you experience a site visit, the first step is to politely request to see the representative’s identification to verify the legitimacy of the visit.

Did Your Company or Your Employee Do Anything To Trigger this Site Visit?

In the vast majority of cases, the targets of site visits are randomly selected. While a company may file scores or hundreds of visa petitions for its employees, on a typical site visit the representative will come asking about one employee’s case in particular to make sure it “checks out.”

What Questions Will the DHS Representative Ask?

In most instances, the investigator will ask to meet with the company representative who signed the visa petition. He or she will ask for basic information about the employer, such as year of incorporation, locations of its offices, number of employees, and hours of operation. He or she will ask about the employee's title and job duties, and about what salary the employee earns. In addition, he or she may ask for proof of wages paid to the employee to confirm that the employee is being paid the rate of pay promised in the petition.

The representative will also ask whether the employer or the employee paid for the H-1B visa processing fees. (As you know from our prior Alerts, the employer must pay for the filing fees—only the premium processing fee may be paid by the employee.) In some instances, the DHS representative or agent will also ask to meet with the employee in question, and may ask the employee some of the same questions to see if the answers are consistent.

Will We Get Advance Notice of a Site Visit and Can Our Attorney Be Present?

The procedure varies. Some companies are given advance notice of a site visit, and it is scheduled at the mutual convenience of the DHS and company representative, in which case there is time to arrange for counsel to be present. More frequently, the DHS representative or agent arrives without warning. Once you greet the representative and ascertain the purpose of the visit and which employee he or she is checking on, there should be time to make the DHS representative comfortable in a waiting area or conference room while you contact counsel and obtain the relevant file.

ICE I-9 Inspections

In addition to the site visits that USCIS is conducting to verify the information contained in visa petitions filed by employers on behalf of their foreign workers, the Immigration and Customs Enforcement (ICE) division of DHS is also conducting targeted inspections of employers' Form I-9 records. Indeed, in July 2009, ICE issued Notices of Inspection (NOIs) to 652 businesses across the U.S.

As ICE said in the announcement it made regarding this initiative, "Inspections are one of the most powerful tools the federal government has to enforce employment and immigration laws." ICE is committed to inspecting Forms I-9 to ensure that employers are in compliance with their I-9 obligations and that their employees are authorized to work in the U.S.

I-9 inspections are typically targeted as a result of leads and tips. When an employer receives an NOI, it usually has only three days advance notice to prepare for the inspection, or less if ICE presents a search warrant. **It is critical that employers routinely conduct internal I-9 self-**

audits and engage in regular and systematic training of personnel with responsibility for I-9s to ensure that their I-9s are in order.

Mintz Levin is available to conduct I-9 audits and trainings at your offices and through webinars, which can reach all employees responsible for I-9 compliance throughout a multi-office organization.

Be Prepared

Since DHS site visits and investigations can come without warning, and since non-compliant employers are subject to serious fines and penalties, it is critical that your immigration files are in order and that you are prepared ahead of time:

- Ensure that your company has a designated point-of-contact in the event of a DHS visit, and a back-up person to assume this function if the designated person is out of the office on the day of the visit, and ensure that the staff are aware of who the contact persons are.
- Ensure that your immigration files are in good order, including (1) Immigration correspondence files, (2) H-1B Public Inspection Files, and (3) I-9s. These sets of files should be reviewed and updated annually.
- Contact your Mintz Levin attorney immediately if you receive any communication about a visit or inspection from DHS.
- Ensure that you check with your Mintz Levin immigration attorney if you anticipate making any changes to a sponsored foreign national's position, job location, or wages. In some cases, amended visa petitions must be filed or labor condition application notices posted to keep your company in compliance.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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