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Lawyers Warn Employers of Foreigners: Comply with Laws

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As U.S. immigration authorities step up work site inspections and audits, employers should implement rigorous procedures for compliance, experts say. Work site investigations rose from 1,716 in fiscal 2017 to 3,510 between October 2017 and May 4 of fiscal 2018.

As U.S. immigration authorities step up worksite inspections and audits, employers should implement rigorous procedures for compliance, experts say.

Worksite investigations rose from 1,716 in fiscal 2017 to 3,510 between October 2017 and May 4 of fiscal 2018, while audits of company I-9 employment eligibility verification forms rose from 1,360 to 2,282 over the same period, according to U.S. Immigration and Customs Enforcement statistics. **"For our fellow attorneys, the quick answer is compliance, compliance, compliance,"** said Lisa Pino, counsel at Mayer Brown LLP in Washington, D.C.

The penalties for incomplete or incorrect employment records, or illegally employing foreign workers, range from fines to criminal prosecution, Pino said.

In light of the increased enforcement, companies and their counsel should hire an immigration manager or dedicate someone to ensuring company employment eligibility verification forms are up to date and correctly maintained, she said.

Many companies might continue to keep and use outdated I-9 files since the form changes frequently -- and doubled in length last year, according to Allen Orr, a Washington, D.C.-based immigration lawyer and treasurer of the American Immigration Lawyers Association.

"They could be completing a form that's outdated," Orr said. Many companies keep incorrect forms without knowing it, he said.

This could affect a company's bottom line. ICE increased fines in January for I-9 violations and employing workers without permission to live or work in the U.S., Orr said.

"It's really important to periodically review your onboarding process and your records retention process," said Benjamin Ebbink, of counsel at Fisher & Phillip LLP in Sacramento.

"Within the first three days of someone working for a company they need to complete an I-9 form," Orr said, referring to foreign workers regardless of immigration status.

Failing to complete forms quickly enough during the hiring process is a common way for companies to be out of compliance, he said.

For companies that employed significant immigrant labor -- specifically agriculture, construction, restaurants, and technology -- this is especially important, Ebbink said. Those employers are more likely to be inspected.

California law that went into effect this year -- AB 450 -- could further complicate workplace enforcement. The law requires California employers to demand a judicial warrant from federal agents seeking to inspect workplaces before allowing them to see records or access nonpublic areas.

AB 450 is one of the three state immigration laws the U.S. Department of Justice sued California over in March. The state law impedes immigration officials doing their jobs, the lawsuit maintains.

"We strongly encourage folks to have key point people who are responsible for these issues," Ebbink said. It is imperative employers are prepared and staff know whom to contact and what to do in the event of a work site visit or notice of inspection by ICE agents, he said.

ICE Deputy Director Thomas Homan promised to increase worksite inspections by four to five times in October, saying federal agents must increasingly seek employees without proper work authorization or permission to be in the U.S. in lieu of assistance from local law enforcement.

"We're finally seeing the rubber meeting the road," Ebbink said.