

2019 Staffing Law Conference







2019 MA STAFFING LAW CONFERENCE

IN THE CROSSHAIRS: IMMIGRATION ENFORCEMENT AND STAFFING COMPANIES







In the Crosshairs: Immigration Enforcement and Staffing Companies

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Agenda

- Review of pressing immigration issues affecting staffing companies I-9 investigations, including electronic Form I-9 compliance
- - U.S. Department of Justice investigations
 - U.S. Department of Labor investigations
 - H-1B visa sponsorship in professional sector
- What can we anticipate in the coming year?
 - Enforcement
 - Legislation



I-9 Investigations

More than 5,200 I-9 investigations initiated in 2018

- Standard subpoena language asks for names of all staffing companies
 - I-9 investigations initiated for staffing companies within six months
- Heavy focus on
 - Remote hires
 - Electronic I-9 compliance



iated in 2018 or names of all staffing companies fing companies within six months

Remote Hires

Know that staffing companies frequently use remote hires

- Looking for situations when original documents were NOT viewed
 - Press for seven-figure fines in this instance
 - Belief that staffing companies are trying to "cut corners" on hiring



Electronic I-9 Compliance

Heavy focus on "audits" of electronic systems used

- In-person demo of system
- Compliance with Aug. 22, 2012, Audit Trail Memo
 - No prepopulation
 - Separate and unique logins by employee and employer
 - Audit trails



Electronic I-9 Compliance

- Be prepared
 - Ask vendor now if
 - the I-9
 - It is able to produce within three business days, just like the actual I-9



- It is able to produce audit trails for ALL I-9s in the system, for every field of

Department of Justice Investigations

- Reviewing onboarding process, rather than I-9 completion
 - Using E-Verify data to analyze workforce for reliance on foreign workers
 - Investigation initiated to see if there is a preference for foreign workers over U.S. workers
 - Any processes in the onboarding that discourage (in the government's view) the hiring of U.S. workers
 - Bring two forms of ID
 - Bring driver's license and Social Security card
 - Bring green card



Department of Labor Investigations

For staffing companies that hire H-1B workers

- furloughs
 - they elect at the time of hire not to be paid for holidays
 - Significant backpay exposure



Heavy focus on whether or not H-1B workers receive full pay during holidays or

- Are NOT accepting the argument that H-1B worker does NOT need to be paid if

- Graduate students in U.S. universities:
 - Electrical Engineering: 81% international students
 - Computer Science: 79% international students



H-1Bs for STEM

H-1B Processing

- Hire American" Executive Order in April 2017:

 - quarters of 2017 (63,184 vs. 63,599)
 - 69% of cases now getting RFEs

Data from National Foundation of American Policy



Lots of publicity on much more stringent processing following "Buy American and

• 41% increase in denials from third to fourth quarter of 2017 (22.4% of total filed) • Requests for evidence (RFEs) in fourth quarter of 2017 = RFEs for all of first three

Hopeless?

- Definitely not
 - Most common issues:
 - Length of project
 - particular field to do?
 - Avoid RFE by getting end client letter, if at all possible
 - If get RFE, don't give up



- "Specialty occupation"—does job require at least a bachelor's degree in a

Where We Have Been



Where is it going?

The USCIS Charge



USCIS 🤣 @USCIS · Feb 11 It's our duty to protect jobs for U.S. workers by enforcing immigration laws and reducing illegal immigration. uscis.gov/legal-resource... #BuyAmericanHireAmerican



Protecting the Interests of U.S. Workers





Buy American and Hire American

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Heavy Public and Private Interest and **Demand in USCIS Programs**



Michael J. Bars @ @SpoxUSCIS · 16m (1/5) Each year at the start of #H1B petition season, trucks line up at @USCIS facilities to deliver enormous pallets loaded with paperwork from employers seeking foreign workers to fill high-skill jobs.





Hey, Bob, what about those Nov. 7, 2018, post-election predictions?





What's Around the Corner Now?

White House/administration Congress







ALWAYS STAY ALERT!!!