



BREAKING BARRIERS

Immigration Update

What Employers Need
to Know

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Introduction

- Current climate
- Common visa categories
- Worksite investigation preparation
- Form I-9 audits

Current Immigration Climate

- The Executive Branch (President) administers and enforces U.S. immigration laws.
 - “Buy American Hire American” Executive Order
- Increased employer enforcement
 - Multiple large scale worksite raids in 2018
- Increased detention of undocumented individuals
 - Including those without criminal issue(s)

FY2018 Enforcement Stats

- 6,848 worksite investigations compared to 1,691 in FY17.
- 5,981 I-9 audits compared to 1,360 in FY17.
- 779 criminal and 1,525 worksite-related arrests compared to 139 and 172, respectively.
- Overall increase of 300 to 750 percent over the previous fiscal year.

H-2A Visas

- Program for temporary agricultural workers
 - Only for jobs that are temporary or seasonal in nature
- Must demonstrate that there are not enough U.S. workers qualified and available to do work.
- Housing, transportation, wage, work contracts, reporting, and notice obligations.

H-2B Visas

- Program for temporary *non-agricultural* workers
 - Need for work is seasonal, intermittent, peak load, or one-time occurrence
- Must demonstrate that there are not enough qualified U.S. workers.
- Cap on the number of H-2B visas available each 6 months.
 - Cap is usually met early.
 - Filing now for April 1 filing deadline.
- **Prevailing wage requirements.**

Challenges for Dairy

- H-2A and H-2B are seasonal, temporary visa categories.
 - Milking is not...
- Multiple Congressional bills have been proposed to allow expansion of visa categories for dairy use.
 - No serious “traction” to date on any proposal.

J-1 Visas

- J-1 Exchange Visitor Program
 - Interns (in degree program or recent grads)
 - Trainees (degree or 5+ years experience)
 - Summer work/travel (if enrolled in degree program)
- Expectation that Exchange Visitor will return to home country.
- U.S. employer serves as “host company” but most paperwork administered and processed by 3rd party “program sponsor.”

TN Professionals

- Temporary work authorization for citizens of Canada or Mexico
- Must work in one of the listed NAFTA professions
 - e.g., scientific technicians, dairy/animal scientists, animal breeders, veterinarians
- Individual must meet qualifications listed in NAFTA treaty
 - Bachelor's degree for most professions
- Process is generally easier, faster, and cheaper than other employer-sponsored visa categories

H-1B Professionals

- H-1B is the most common status for foreign workers in professional positions.
 - Examples: veterinarians, food scientists, IT staff
 - High denial rates currently
- Bachelor's degree or higher in relevant field required.
- USCIS will accept new H-1B petitions on April 1, 2019.
 - **START PLANNING NOW!**

Permanent Residence

- Employer-sponsored “green cards”
 - Takes 2-5 years for most workers
 - Must usually perform labor market “test” showing unavailability of qualified U.S. workers
 - Can sponsor workers without degrees, nonprofessionals.

Worksite Investigations

- Develop written procedures for ICE visits
 - Designate someone in the organization to handle government visits.
 - Understand employer rights during a workplace investigation.
- Ensure compliance with employer obligations of the employment-sponsored visa categories, if you sponsor employees for work visas.

Preparing for an ICE Audit

- Do your own I-9 audit first!
 - Audit should be done by an individual who does not normally handle I-9 processing.
 - Have 3rd party audit every 2-3 years.
- Track reverification dates and notify employees 4+ months.
- Consult *Handbook for Employers* (www.uscis.gov)

Steps for an Internal I-9 Audit

- Use payroll list to check that all employees have an I-9 form.
- Was the correct form version used?
- Was the I-9 form fully completed and signed (Section 1 and Section 2)?
- Check dates of signature against hiring date to catch timing errors.
- Is employee name listed at the top of Section 2?

Steps for an Internal I-9 Audit

- Was document presented an acceptable List A, B, or C document?
 - Notated social security cards are NOT acceptable
 - Was the document expired?
 - Was the document title, the issuing authority, the document number, and the expiration date, if any, noted?
 - Were too many documents listed?
 - Was reverification needed, performed?

Other Compliance Strategies

- Train human resources and hiring personnel on employment authorization and immigration rules.
- Include I-9 related provisions in service contracts.
- Create and maintain up-to-date and uniform policy on employment verification procedures, social security number mismatch notice response, and protocol for employees presenting new ID/SSN information.

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Questions

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