

## Blog Post

# Best Practices for Employers in Managing USCIS Administrative Onsite Inspections, ICE Raids, and Form I-9 Audits

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In today's increasingly complex immigration enforcement setting, employers face multiple challenges, including unannounced USCIS Administrative site visits (also known as onsite inspections), U.S. Immigration and Customs Enforcement (ICE) workplace raids, and Form I-9 audits. While these processes all aim to ensure compliance with federal laws, they have distinct purposes and require different strategies to effectively address. ICE raids primarily target unauthorized workers and enforce immigration laws, often causing significant disruptions and legal consequences for businesses. USCIS onsite inspections, on the other hand, are conducted to verify that the terms outlined in H-1B, and other Nonimmigrant Worker visa petitions, are being followed, as far as employee duties, compensation, and work location. Finally, I-9 audits carried out by the federal government focus on ensuring that all employees are properly documented and that employers maintain accurate records.

Understanding how to manage these three processes is crucial for maintaining compliance and protecting businesses from potential fines, penalties, and reputational damage. In this blog, we'll provide practical steps to handle USCIS onsite inspections, ICE raids, and Form I-9 audits, helping employers

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stay prepared and confident in managing obligations under federal law.

## I. What to Expect During an H-1B Onsite Inspection

The H-1B visa status allows U.S. employers to temporarily employ foreign professionals in specialty occupations. U.S. Citizenship and Immigration Services (USCIS) ensures compliance with H-1B program requirements through unannounced onsite inspections, part of the Administrative and Verification Program, administered by USCIS Fraud Detection and National Security Unit (FDNS), with the objective of detecting fraud and abuses within the H-1B program.

H-1B onsite inspections verify that information provided in an employer's H-1B petition filed with USCIS on behalf of the employee is accurate and truthful; confirm the employer knowingly filed the petition in good faith; and ensure the employee is qualified for the position stated in the petition. Thus, understanding how to handle the arrival of a USCIS inspector can make the process smoother and help ensure compliance. Below are steps to follow in anticipation of, and during, an onsite inspection.

**Prior to an Onsite Visit** — The employer should designate an organizational representative in advance to an onsite inspection. They must have knowledge about H-1B petitions to act as the point-of-contact for the inspector. The representative should:

- Be prepared to answer questions about the nonimmigrant worker, including their job duties, salary, and worksite location(s).
- Provide access to requested documentation, such as the Public Access Files (PAFs), in a timely and organized manner. PAFs are mandated by the Department of Labor (DOL) for H-1B visa holders, to ensure transparency and public access to certain information about H-1B workers for

purposes of protecting both foreign and domestic workers' interests. A PAF includes documents such as the Labor Condition Application (LCA), wage rate documentation, job description, and prevailing wage determination.

- Proactively review and familiarize themselves with the PAFs to ensure they are complete and accurate. Employers must maintain PAFs for one year beyond the last date on which any H-1B nonimmigrant is employed under the LCA.
- If the primary contact is unavailable, ensure a trained backup representative is ready to step in.

**Day of the Unannounced Onsite Visit** — A USCIS FDNS inspector or an outside contractor authorized to conduct administrative site visits will appear unannounced at the employer's principal place of business, or the H-1B employee's work location, to verify the employment terms outlined in the H-1B petition are being met and whether the employee is working in compliance with the terms outlined in the H-1B petition filed by the employer.

When the inspector arrives, the company representative will greet them professionally and request proper identification and credentials issued by the Department of Homeland Security (DHS). Inspectors are required to provide this information upon request. The inspector's credentials should be verified before they are allowed to proceed.

**Duration of Onsite Inspections** — Onsite visits can take a few hours, depending on the complexity of the case and the inspector's objectives. Others could take an entire day or require follow-up visits. If the inspector requests to call the H1-B employee, the employee can request that the inspector contact the employer first.

**Information and Documentation Requested by an Inspector Throughout the Onsite Visit** — During an inspection the inspector will:

- Verify the information in the Petition for Nonimmigrant Worker (Form I-129) and Labor Condition Application (LCA), including supporting documents.
- Review public records and information about the petitioning organization.
- Interview personnel to confirm the H1-B employee's work location, hours, salary, and duties.
- Tour the company facility or the employee's department, or visit the employee's workspace, if necessary.
- Request to review certain documents, including the employee's pay stubs and the company's financial reports.
- Verify the employer's address listed on the H1-B petition.
- Confirm the H1-B employee's worksite. Therefore, it is imperative to verify that the worksite indicated on the H-1B petition matches the employee's actual location.
- Review the employee's job duties and previous employment.
- Check access to the employee's schedule and identify the employee's supervisor.
- The inspector may also request a picture ID from the organizational representative.
- The inspector may request to tour the facility, examine records, or speak with other employees.

A company representative should accompany an inspector at all times of the visit to monitor the scope of the inspection and ensure it aligns with USCIS's stated purpose; provide context or clarification as needed; and prevent unauthorized access to sensitive areas or unrelated records.

Inspectors must obtain permission before taking photographs or accessing areas not directly related to the H-1B petition.

Additionally, the inspector may ask the company representative to confirm the following:

- How long the employee has been employed by the employer.
- The employee's official job title.
- Whether the representative has access to the employee's PAF.
- The recruitment method utilized to hire the employee.
- How long the company advertised the position.
- Where the job was posted (i.e., career website, newspaper, job board).
- The representative's role in onboarding.
- How frequently the employee's performance is evaluated.
- Whether the employee is paid hourly or on a salary basis.

**Documentation Requested by the Inspector During the Onsite Visit** — The inspector may ask for specific documents, such as: H-1B Public Access File; payroll and W-2 records to verify the H-1B employee's salary; and proof of the H-1B employee's active employment and job duties.

The company representative should ensure all requested documents are readily accessible and organized. They should only provide information specifically requested by the inspector to avoid confusion or unnecessary disclosures.

**Employer Representative Must Facilitate Employee Interviews** — The inspector may wish to interview the H-1B employee. The employee should be prepared to respond to questions they may be asked, such as:

- Details about their job duties and work schedule.
- Information about their educational background.

- Whether they paid any fees related to the H-1B petition.
- Questions related to their previous employment.

The employee should be encouraged to answer questions honestly and succinctly. If the employee is unsure of an answer, they should not guess but instead state that they do not know.

If the employee is not at the worksite, an inspector may note the visit as “unsuccessful” but schedule a visit for a future date and time.

**After the Onsite Visit** — Immediately after the onsite visit is completed, the company representative should review their notes and immediately consult with their legal counsel to:

- Ensure all requested documentation was appropriately provided.
- Address any additional follow-up requests from USCIS.
- Identify any potential compliance issues and take corrective action as needed.

The company representative should keep a detailed record of the inspection, including:

- Inspector’s name, title, and agency contact information;
- Date and time of the visit;
- Summary of the questions asked and documents provided; and
- Notes on any photographs taken or areas visited.

These records can be invaluable if follow-up actions are required or if questions arise about the inspection.

## II. What to Expect During an ICE Raid, and Steps an Employer Should Follow



**Prepare in Advance** — Although similarly “unannounced,” ICE raids will go much more smoothly for employers who are adequately prepared, including through taking the following actions:

- Designate a trained point of contact (e.g., a manager or HR representative) to handle interactions with ICE agents.
- Conduct regular training sessions for employees on their legal rights, including the right to remain silent and the right to refuse a search without a valid warrant.
- Maintain all employment verification records (e.g., I-9 forms) in compliance with immigration laws to avoid potential penalties.

**Review Warrants Carefully** — If ICE agents arrive, ask to see the warrant. Verify that it is signed by a judge and includes specific details, such as the areas to be searched or individuals targeted; do not allow ICE agents to access non-public areas of the workplace without a valid judicial warrant. Administrative warrants issued by ICE do not provide legal authority to enter non-public areas without consent.

**Restrict Access to Non-Public Areas** — Politely inform ICE agents that they cannot enter non-public areas unless they present a valid judicial warrant; direct agents to wait in a designated public area while the warrant is reviewed by your designated point of contact or legal counsel.

**Do Not Provide Additional Information or Assistance** — Do not provide information about employees, such as schedules, immigration status, or personal documents, unless required by the warrant; do not assist ICE agents in identifying or sorting employees based on nationality, language, or immigration status.

**Remain Calm and Professional** — Ensure all interactions with ICE agents are calm and respectful to avoid escalating the situation; encourage employees to remain calm and follow the training they've received on their rights.

**Document the Incident** — Record key details of the raid, including:

- Names and badge numbers of ICE agents;
- Type of warrant presented;
- Any actions taken by the agents, including searches or arrests; and
- Any instances of threats, mistreatment, or misconduct.

Take photographs or video recordings without interfering with law enforcement activities.

**Provide Legal Support to Employees**

- Inform employees of their right to consult an attorney, if detained.
- Assist detained employees in contacting legal counsel and ensure they understand their right to a private phone call.
- Connect employees with an immigration attorney or advocate.

**Do Not Retaliate Against Employees** — Do not retaliate against employees for exercising their rights or for being targeted in an ICE raid. Retaliatory actions may result in additional legal consequences.

**Follow Up After the Raid**

- Review and assess the raid with your legal counsel to determine any necessary next steps.
- File complaints if ICE agents exceeded their authority or engaged in misconduct during the raid.



- Provide emotional support and counseling resources to affected employees.

**Stay Compliant and Proactive** — Regularly audit your I-9 records to ensure compliance with immigration laws; avoid knowingly employing unauthorized workers to reduce the risk of future enforcement actions.

By following these steps, employers can ensure that they handle ICE raids lawfully and effectively while protecting their business and employees' rights.

### III. What Happens During a Form I-9 Audit?

Form I-9 audits are conducted by Immigration and Customs Enforcement (ICE) to ensure employers comply with employment eligibility verification requirements under the Immigration Reform and Control Act (IRCA). These audits focus on verifying that employers have properly documented their employees' eligibility to work in the U.S. Ensuring all I-9 forms are completed accurately and on time is crucial. Any discrepancies or errors can lead to potential fines or penalties. This includes proper completion of Sections 1, 2, and 3 of the Form I-9, as well as timely re-verification for employees with temporary work authorization.

Employers must verify the authenticity and validity of documents presented by employees as proof of identity and work authorization. This verification process must be done without discrimination and in accordance with the law, which can be complex due to the variety of acceptable documents and potential changes in immigration regulations.

#### **Step-by-Step Outline of an Official ICE I-9 Audit**

**Step 1: Notice of Inspection (NOI)** — The employer receives an NOI from ICE or the Department of Homeland Security (DHS), notifying them of the audit. Employers typically have three business days

to gather and present the required Form I-9 documents.

Step 2: The employer must provide I-9 forms for all current employees (and some past employees, depending on recordkeeping requirements). ICE may request additional documents, such as payroll records, employee lists, and copies of identity and work authorization documents (if retained by the employer).

Step 3: ICE auditors review I-9 forms for incomplete or missing forms, errors in form completion (e.g., incorrect document verification), unauthorized workers (employees without proper work authorization), and improper recordkeeping.

Step 4: After the review, ICE may issue one or more of the following findings:

- Notice of Compliance — No violations found, and the employer is in full compliance.
- Notice of Technical or Procedural Failures — Minor errors that must be corrected within 10 business days.
- Notice of Suspect Documents — ICE believes the employee has fraudulent or unauthorized work authorization. The employer must take action, including terminating the employee if work authorization cannot be verified.
- Notice of Discrepancies — ICE cannot determine work authorization for some employees; the employer must provide additional documentation.
- Notice of Intent to Fine (NIF) — Issued if significant violations are found, leading to potential financial penalties.

Step 5: Employer Response and Potential Fines — Employers may correct minor violations within 10 days to avoid fines. If fined, employers can pay the fines, negotiate a settlement with ICE, or request a

hearing before an Administrative Law Judge (must be done within 30 days)

**Step 6: Final Decision and Penalties** — If the employer contests the fines and loses the appeal, they must pay the penalties. Penalties can range from hundreds to thousands of dollars per violation, depending on the severity and history of non-compliance. In extreme cases, criminal charges may be pursued if the employer knowingly hired unauthorized workers.

**Step 7: Follow-Up and Future Compliance** — ICE may conduct follow-up audits to ensure ongoing compliance.

**Best Practices — Regular Internal Form I-9 Audits** — Employers should conduct regular internal I-9 audits to ensure all forms are complete and accurate. Any discrepancies, such as missing signatures or expired documents, should be corrected immediately. Establish a system for maintaining I-9 records and ensure they are stored securely.

**Best Practices — Train Employees on Form I-9 Compliance** — Employers should educate HR personnel and managers about Form I-9 compliance, the proper completion of forms, and the need to verify employment eligibility documents within the required time frame. Regular training can prevent common errors that often lead to penalties.

## Key Takeaways

While employers may have little to no notice of various immigration enforcement measures, adequate preparation is key to minimizing disruption and the legal consequences that could result. For questions, guidance, or assistance with workplace immigration issues, reach out to an Akerman immigration team member.

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