



February 2017

Coming Soon to a Worksite Near You: Site Visits and Form I-9 Audits

As part of its stated goal to protect the U.S. worker, President Trump's administration will be increasing worksite enforcement activities. This likely means that there will be more site visits of companies utilizing visa programs and more Form I-9 audits of all employers.

Site visits are handled by the Fraud Detection and National Security (FDNS) division of U.S. Citizenship and Immigration Services (USCIS). FDNS officers visit worksites unannounced and speak with employers and visa holders about the conditions of employment. If the FDNS officers discover information that is inconsistent with the visa petition being reviewed, the visit may result in USCIS issuing a Notice of Intent to Revoke the visa petition and the visa holder may need to leave the United States.

Form I-9 audits are handled by U.S. Immigration and Customs Enforcement (ICE). ICE officers initiate Form I-9 audits by delivering Notices of Inspection (NOIs) to worksites. These NOIs instruct companies that they have three (3) days to present the Form I-9s of both active and terminated employees to ICE. As part of the audit, ICE forensic auditors, as well as field agents, inspect the companies' hiring records to determine whether or not they are complying with the Immigration Reform and Control Act of 1986 (IRCA), as well as other immigration-related laws. Currently, ICE has 1,000 auditors assigned to Form I-9 audits. President Trump's administration reportedly intends to hire 20,000 additional ICE agents, some of whom will likely be tasked with Form I-9 inspections.

Under IRCA, employers are required to verify the identity and employment eligibility of each employee hired after Nov. 6, 1986. This verification is done by completing and retaining a Form I-9 for each individual hired. Employers must review documents for each new hire and ensure the documents appear reasonably genuine prior to accepting them.

President Trump's administration has indicated that it intends to go after companies it views as harmful to U.S. workers: employers that hire "too many" foreign workers and employers that hire unauthorized workers. It is clear the government considers site visits and Form I-9 inspections to be important tools in its effort to support this focus. This renewed zeal to utilize administrative tools, including civil monetary penalties where Form I-9 inspections are

concerned, coincides with the government's recent inflation adjustment in fines for Form I-9 violations. As of January 2017, paperwork violation fines range from \$220 to \$2191 for each violation and fines for substantive violations range from \$452 to \$21,916. Multiple violations that rise to the level of a "pattern or practice" can trigger criminal penalties and Attorney General Jeff Sessions' Justice Department will likely not shy away from prosecuting such cases.

During President Obama's administration, ICE made clear that it prioritized its enforcement efforts based on national security concerns, such as critical infrastructure and government contractors. Now, ICE will likely be targeting industries that are heavy visa users, such as high-tech and staffing companies, as well as industries viewed as magnets for illegal immigration, such as hospitality, landscaping, construction, and manufacturing.

Employers should prepare now for this higher risk of site visits and Form I-9 inspections by consulting with counsel to develop an internal protocol for dealing with unannounced visits by USCIS and ICE inspectors. For example, receptionists, who are often the first point-of-contact at a place of business, should be instructed to immediately contact the appropriate individual(s) at the company in the event an FDNS or ICE officer visits the company. Any information provided to an FDNS or ICE officer could be used against the company later in the petition review or audit process, so it is important that only management, HR personnel, or designated employees should communicate with government officials. Additionally, if your receptionist is authorized to accept and receive a NOI, they should be made aware that they must notify management immediately because the NOI must be responded to within three (3) days, as provided by law.

Having a plan in place not only helps everyone respond appropriately in this type of situation, but also helps alleviate the panic that occurs when a government agent shows up at your place of business.

Our next *GT Alert* will address what to do when you receive an NOI.

Greenberg Traurig's [Business Immigration and Compliance Group](#) is a multidisciplinary business immigration practice representing businesses, organizations, and individuals from around the world on a wide range of immigration-related matters. The group has achieved international recognition for legal advocacy, results-oriented service, and responsiveness to its clients. Greenberg Traurig's [Inside Business Immigration blog](#) addresses the latest developments affecting employers, including the E-Verify program, Form I-9 compliance, Department of Labor issues (H-1B, H-2B and LCA), identity fraud in the workplace, electronic Forms I-9s, EB-5 investor regional center compliance, and ICE worksite enforcement audits.

This *GT Alert* was prepared by **Rebecca B. Schechter**. Questions about this information can be directed to:

- > [Rebecca B. Schechter](#) | +1 703.903.7578 | schechterr@gtlaw.com
- > Or your [Greenberg Traurig](#) attorney

The Business Immigration & Compliance Team

- > Laura Foote Reiff[¥] | +1 703.749.1372 | reiff@gtlaw.com
- > Martha J. Schoonover[¥] | +1 703.749.1374 | schoonoverm@gtlaw.com
- > Kate Kalmykov | +1 973.443.3276 | kalmykovk@gtlaw.com
- > Ian R. Macdonald | +1 678.553.2467 | macdonaldi@gtlaw.com
- > Pamela Mak | +1 703.749.1363 | makp@gtlaw.com
- > Rosanna M. Fox | +1 212.801.3197 | foxr@gtlaw.com
- > Kristen T. Burke | +1 713.374.3615 | burkekt@gtlaw.com
- > Nataliya Rymer | +1 215.988.7881 | rymern@gtlaw.com
- > Scott T. Decker | +1 678.553.4753 | deckers@gtlaw.com
- > Rebecca B. Schechter | +1 703.903.7578 | schechterr@gtlaw.com
- > Shaoul Aslan^{*} | +1 703.749.1330 | aslans@gtlaw.com
- > Kristin Aquino-Pham | +1 678.553.4755 | aquinophamk@gtlaw.com
- > Jordi S. Bayer | +1 212.801.2178 | bayerj@gtlaw.com
- > Jennifer Blloshmi[~] | +1 310.586.6538 | blloshmij@gtlaw.com
- > Kristin Bolayir[~] | +1 703.749.1373 | bolayirk@gtlaw.com
- > Dillon R. Colucci | +1 949.732.6592 | coluccid@gtlaw.com
- > Nataliya Dominguez | +1 703.903.7583 | dominguezn@gtlaw.com
- > Patricia A. Elmas[~] | +1 703.749.1371 | elmasp@gtlaw.com
- > Jennifer Hermansky | +1 215.988.7817 | hermanskyj@gtlaw.com
- > Cole F. Heyer | +1 678.553.2117 | heyerc@gtlaw.com
- > Kristen W. Ng[‡] | +1 703.749.1388 | ngk@gtlaw.com
- > Courtney B. Noce[€] | +1 678.553.2457 | nocec@gtlaw.com
- > Linnea C. Porter | +1 678.553.1121 | porter@gtlaw.com
- > Sylvia Sobczyk | +1 973.443.3239 | sobczykks@gtlaw.com
- > Shaun K. Staller | +1 215.988.7882 | stallers@gtlaw.com
- > Lauren A. Tetenbaum | +1 212.801.6894 | tetenbauml@gtlaw.com
- > Yeyun "Alan" Yang | +86 (0) 21 6391 6633 | yangy@gtlaw.com
- > Jia Zhao | +1 212.801.6723 | zhaoj@gtlaw.com

[¥] Not admitted to the practice of law in Virginia.

^{*} Admitted in the District of Columbia and U.S. Court of Appeals for the D.C. Court, not admitted in Virginia, and is limited to federal immigration practice.

[~] Not admitted to the practice of law.

[‡] Admitted in New York, and not admitted in Virginia.

[€] Admitted in New Jersey and New York, and not admitted in Georgia.

Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +03.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[⌘] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Chicago +1 312.456.8400	Miami +1 305.579.0500	Seoul[∞] +82 (0) 2.369.1000	West Palm Beach +1 561.650.7900
Dallas +1 214.665.3600	New Jersey +1 973.360.7900	Shanghai +86 (0) 21.6391.6633	

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁻Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻ Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. ^{}Operates as a separate UK registered legal entity. ^{**}Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [⌘]Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [~]Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2017 Greenberg Traurig, LLP. All rights reserved.*