



# An Employer's Guide to Immigration Audits and Enforcement Actions in 2018

**March 13, 2018**

Presented By:

Courtney Noce, Immigration and Compliance

Scott Decker, Immigration and Compliance

Christiana Signs, Labor & Employment

# Our Presenters



**Courtney B. Noce**  
*Shareholder*  
Immigration & Compliance

[nocec@gtlaw.com](mailto:nocec@gtlaw.com)

678.553.2457



**Scott T. Decker**  
*Of Counsel*  
Immigration & Compliance

[deckers@gtlaw.com](mailto:deckers@gtlaw.com)

678.553.4753



**Christiana L. Signs**  
*Associate*  
Labor & Employment

[signsc@gtlaw.com](mailto:signsc@gtlaw.com)

215.988.7868

# Agenda

---

- Immigration & Compliance in the Current Administration
- Audits & Investigations
- Special Considerations
- Internal Compliance



# **Immigration & Compliance in the Current Administration**

Overview of current government policies and position

# Make America Great Again (MAGA)

---

- Restriction
- Enforcement of existing laws
- Fraud prevention

# Executive Orders

---

- Travel bans
- National security/border enforcement
- BAHA

# Fraud Prevention & Inter-agency Cooperation

---

- Directives from current Administration
  - USCIS
  - DOS/DOJ
  - Fraud prevention lines and emails

# State and Local Laws

---

- State/local conduct mirroring current Administration
  - Texas Senate Bill 4
- State/local conduct contrasting with current Administration
  - California Assembly Bill 450





# Audits & Investigations

Potential interactions with and audits by different government agencies tied to immigration issues

# I-9 Obligations

---

- History of the I-9
- Employer's I-9 obligations
  - Verify identify and work authorization of new hires
  - Document retention
  - Avoid over documentation
  - Avoid discrimination

# E-verify

---

- General background
- Current federal law is the floor
  - Federal contractors
  - State and local laws
  - Proposals for mandatory E-verify
- Factors affecting decisions to implement

# I-9 / ICE Audits

---

- ICE conducts I-9 investigations
- Initiation may be based on:
  - individual complaints,
  - ICE initiative, or
  - referral from government agency
- Document request
- Time to respond

# I-9 Audit Considerations

---

- State and local laws
  - California law regarding workplace compliance with federal audits
- Document retention and retrieval

# Potential outcomes/dispositions of audit

- Potential resolutions/communications from government leading to next steps
  - Notice of inspection results
  - Notice of suspect documents
  - Notice of discrepancies
  - Notice of technical or procedural failures
  - Warning notice
  - Notice of intent to fine
- Exposure
  - Fines
  - Cease and desist order
  - Debarment from federal contracts

# Immigrant and Employee Rights Investigations

- Anti-discrimination provision of INA
- Investigations conducted by Immigration and Employee Rights (“IER”) section of Department of Civil Rights
  - Similar to EEOC investigation
  - Claims may only proceed before one agency
- Record preservation/discovery
- Exposure/potential liability

# USCIS – FDNS Site Visits

---

- Fraud Detection and National Security Directorate
- What to expect
- Special considerations / potential issues
  - Change in position or location
  - Change in role
  - Third party placement or remote work
- Potential outcomes



# Department of Labor Audits

---

- DOL audits employers who utilize H-1B, H-1B1, and/or E-3 visa programs for specialty workers
- Audits typically initiated by outside/non-agency complaint
- 30-day audit period/discovery
- Exposure/potential liability



# Special Considerations

Issues and complications that may arise in the event of government audits and enforcement actions

# Companies That Use Independent Contractors

- I-9 regulations: employee versus independent contractor
- Who is an independent contractor?
  - Case-by-case, factors to be considered include whether the person:
    - Supplies the tools or materials;
    - Makes services available to the general public;
    - Works for a number of clients at the same time;
    - Has an opportunity for profit or loss as a result of labor or services provided;
    - Invests in the facilities for work;
    - Directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done.

# Joint Employer

---

- No definition of joint employer in I-9 regulations, less case law on the topic
- Nonetheless, government has imposed I-9 obligations on entities it found to be joint employers
- Does a joint employer need to prepare an I-9?



# Internal Compliance

What employers can do now to be proactive with their immigration policies

# Establish Or Review And Update Internal Policies

- Identify policies that have immigration implications and make sure they comply with current law
  - Recruitment and onboarding processes
  - Background check policy
- Consider instituting a corporate immigration policy
  - Timelines for sponsorship
  - Employee obligations
  - At-will employment considerations
- Immigration Compliance Officer

# Employment / Immigration Training

---

- Company culture of continuous training
- Include any employees involved in hiring, onboarding, and promotion decisions
- Educate employees
  - Company policies
  - Legal obligations
- Internal I-9 audits
- Document retention policies

# Electronic Solutions

---

- I-9 versus E-Verify
- Consider electronic systems
  - Stand alone versus integrated
- Beware of internally developed tools





# QUESTIONS?

# Thank You!



**Courtney B. Noce**  
*Shareholder*  
Immigration & Compliance

[nocec@gtlaw.com](mailto:nocec@gtlaw.com)

678.553.2457



**Scott T. Decker**  
*Of Counsel*  
Immigration & Compliance

[deckers@gtlaw.com](mailto:deckers@gtlaw.com)

678.553.4753



**Christiana L. Signs**  
*Associate*  
Labor & Employment

[signsc@gtlaw.com](mailto:signsc@gtlaw.com)

215.988.7868

# For More Information

---

**Please visit Greenberg Traurig's Labor & Employment blog**

<http://www.gtlaw-laborandemployment.com/>

and

**Greenberg Traurig's Immigration Blog**

<https://www.gtlaw-insidebusinessimmigration.com/>

*For information on HRCI and CLE credit, please email  
Ashley Wall at [walla@gtlaw.com](mailto:walla@gtlaw.com)*