

# NEWS UPDATE

November 24, 2009

## **Subject: USCIS Site Visits for H-1B Program**

As we previously advised on 10/16/2009, USCIS' Office of Fraud Detection and National Security ("FDNS") began conducting **unannounced** employer site visits to assess employer compliance with the H-1B Program. This email provides additional details regarding these unannounced visits at the employer's principal place of business or at the H-1B employee's place of work.

**FDNS do not need a subpoena to complete the site visit.** Security employees should be alerted to contact HR or management before admitting the inspector. Site visits are conducted by contractors who are largely uninformed about immigration law. The contractors are equipped with a specific script of questions to ask, including:

- Does the facility appear to belong to the business in question?
- Was there a representative present (typically HR) to meet the inspector?
- Did the site visit confirm the legitimate business of the employer?
- Does the employer know it filed the H-1B petition, and is the employer aware that the H-1B employee is doing the work and receiving the wages indicated on the H-1B petition?
- Was the H-1B employee available to meet and speak to the inspector?
- Was the H-1B employee able to confirm details of his/her employment (hours, duties, salary, title, etc)?

Employers can ask to have their attorneys present during the site visit. However, our experience is that FDNS will not reschedule a site visit to permit an attorney to be present, but may agree to allow counsel to be present by phone.

Our recommendation is to contact us immediately and if possible, put us in touch with the inspector. At a minimum, we can answer any questions you may have during a site visit. Normally the inspector will simply complete a report, and nothing further should occur after the inspection.

In summary, while there is certainly a strong argument that employers have the right to refuse this type of inspection, probably the best strategy is to allow the inspection with the guidance of the employer's HR or management in conjunction with legal counsel. The inspector does not have an unlimited right to access private data. The employer only has to provide sufficient documentation to show that the H-1B employee is being paid the wage stated.

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