

**What Every Employment Lawyer Needs to Know
about Immigration Law:
*Red Flags at the Crossroads of Immigration and
Employment Law***

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Outline

- Business Immigration Overview
- I-9 Compliance Basics
- Red Flags to Minimize Immigration Risks for Employers
- Seven “Best Practice” Immigration Compliance Tips for Employers
- Question and Answer



Immigration Overview

- Statutory Groups of People
 - United States Citizens
 - Aliens
 - Immigrants
 - Non-Immigrants
- Statuses and Visas
 - Visa
 - Permits the Alien to Approach the Border
 - Not an Immigration Status



Immigration Overview (Cont.)

- Immigration Status
 - Two Basic Kinds: Temporary and Permanent
 - Common “Statuses” with Some Right to Work
 - Temporary (restricted): H, L, TN, E, O, R, F-1, F-1(OPT)
 - Temporary (unrestricted): Pending Adjustment Applicants
 - Permanent (unrestricted): LPR, Refugees, Asylees
- Common Misconceptions with Status and Visa Issues
 - Possible to Have a Valid Visa and Not Be in Legal Status
 - Possible to Have a Valid Status and an Expired Visa



Immigration Overview (Cont.)

- Trend Towards Increased Enforcement
- Employers Face Increased Risk of Criminal Charges For Employing Illegal Aliens
- Mistakes May Have Harsh Consequences For Employers
- Increased Focus on Fraud Detection with Harsh Consequences for Employers
 - Potential Debarment with Department of Labor
 - Potential for System Wide Credibility Issues
 - Potential Civil and Criminal Liability



I-9s Compliance Basics

- A Key Element In Immigration Compliance
 - Undervalued by Many Employers
 - Many Employers Fail Rigorous Compliance
- Proper Implementation Can Help Detect and Prevent Hiring and Retention of Unauthorized Workers
- Employers Could Improve Compliance By Following Some Common Do's and Don'ts



Common Red Flags In Employer/ Immigrant Employee Relationship

- Layoffs/Terminations In General
 - Severance Issues
 - Bona Fide Termination Issue
- “Benching” Issues
- Non-Competes & Clawback Provisions
- Improper Payment or Reimbursement of Legal Expenses
- Return Ticket Obligation



Red Flags (Cont.)

- Material Change in Job Terms:
 - Hours Reduction
 - Pay Reduction
 - Job Functions
 - Change of Position – Promotion/Demotion
 - Relocations
- Reorganization, Merger, Acquisition, Restructuring or Change of Ownership
- Change of Employer or Moonlighting
- Strikes/Lockouts



Red Flags (Cont.)

- Presentation of Fraudulent Documents At Hiring
- Facts and Circumstances Suggesting that Employees May Not Have Work Authorization
 - Social Security No Match Letters
 - Problems with renewal of identity documents (i.e. Driver's Licenses)
 - Purported USC's or Lawful Permanent Residents Requesting Sponsorship for Immigration Benefits



Seven Best Practice Tips

1. Proof Read- Do Not Knowingly Submit Incorrect Information or Unexplained Contradictory Information to the Government
2. Select One In-house Immigration Gatekeeper
3. Select One Primary Corporate Immigration Counsel
 - Minimizes Chances of Conflicting Representations in Multiple Complex Applications
4. Provide Comprehensive Training to the Gatekeeper
5. Create a Functioning Employer Immigration Compliance Program
6. Monitor Employee Immigration Compliance
 - Employee's Personal Immigration Issues Can Become A Company Issue
7. Plan Ahead



Questions ?

If You Have Additional Questions, Please
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