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Bracing for Impact: What Employers Need to Know About Homeland Security Investigations' Worksite Enforcement Plans

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Our team recently engaged in discussions with both current and former officials at Homeland Security Investigations (HSI), the workplace enforcement arm of the U.S. Department of Homeland Security. In these discussions, beyond learning about the widely publicized plans to declare a state of emergency and to involve the military and national guard in deportation and worksite enforcement activity, we gained insights into a few of the government's lesser-known plans. Some of those plans are highlighted below:

1. Quotas for I-9 Audits

HSI headquarters plans to implement quotas for I-9 audits and worksite enforcement actions, potentially starting as high as 6,000 audits per month, distributed among their 30 offices nationwide. This goal was initially set during the last Trump administration but was sidelined by the pandemic.

2. Strategic Focus Areas

The enforcement strategy will target:

- a. Employers served with Notices of Inspection whose cases stalled during the pandemic and under the Biden Administration.
- b. Businesses previously audited that failed to show compliance with I-9 requirements (e.g., those fined or showing little interest in improving).
- c. Employers gaining competitive advantages by underpaying undocumented workers.
- d. Industries considered low-hanging fruit, such as agriculture, hospitality, food processing, and construction.
- e. Entities with access to critical infrastructure, like airports and military contractors.

3. Auditor Capacity and Outsourcing

Currently, HSI has only 60 auditors to handle I-9 audits—far fewer than needed for their ambitious enforcement plan. They intend to hire additional auditors and establish a center for largescale audits. In the short term, they will outsource many of the audit

functions, bringing in support through outside contractors.

4. Emphasis on Criminal Prosecution

The new administration aims to leverage I-9 audits to establish knowing employment of undocumented workers, with the ultimate goal of conducting worksite raids that remove undocumented individuals from the workforce. The stated goal, as one might imagine, is to dismantle the employment magnet for undocumented workers. While administrative fines will still be imposed in cases where criminality cannot be proven, the priority will be to pursue criminal charges against employers to eliminate incentives for undocumented employment.

5. Increased Scope of Raids

The last significant raid by HSI occurred in 2019 in Mississippi, where hundreds of workers were taken into custody. See: <https://www.ice.gov/news/releases/ice-executes-federal-search-warrants-multiple-mississippi-locations>. Future raids are expected to be even larger, more widespread, and coordinated, potentially with military or National Guard support. Employers may face significant operational challenges from losing large numbers of employees, even if they are not charged criminally for knowing employment.

6. Focus on Joint Employment

The administration will continue its emphasis on joint employment with staffing agencies and contractors, aiming to discourage employers from using these agencies to obscure the employment of undocumented workers. Multi-agency task forces, led by HSI and supported by the Department of Labor, Department of Justice, and state agencies, will become more formalized and coordinated.

7. Changes to Existing I-9 Process

The Biden administration introduced updates to modernize the I-9 Employment Eligibility Verification process, including the option for remote I-9 completion via videoconference. However, this program (which was considered highly controversial with leadership at HSI) now appears to be targeted for possible revocation soon after the new administration takes office.

8. Focus on Electronic I-9 Systems

HSI will closely scrutinize electronic I-9 systems provided by outside vendors, particularly their mandatory audit trails. Recently, one large company received a Notice of Intent to Fine for using a defective electronic system, with penalties amounting to \$24 million. While that case was dismissed on other grounds, it shows the potential exposure defective electronic I-9 programs can cause.

Conclusion

Dramatic changes are on the horizon. As one contact noted, “Your clients

should prepare for a significant increase in enforcement in the coming months.” In anticipation of these developments, employers will want to partner with competent legal counsel and take the following steps: (1) conduct internal audits of their I-9 processes and documentation, (2) remediate any defects in their processes or documentation, (3) evaluate additional steps (e.g., phasing out any employees determined to be undocumented, etc.) in advance of the upcoming enforcement storm.

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