
Immigration Compliance and Policy Checklist

I-9 and E-Verify Compliance and Policy

- Conduct internal I-9 audit.
 - Full audit or representative sampling?
 - How far back to look?
 - Correct and complete I-9's in a proper way (to get good faith compliance credit in the event of a governmental I-9 audit).
 - Decide what you will tell employees about the reason for the audit and what is needed of them.
 - Decide how or if you will reach out to former employees and document those efforts.
- Determine a system to conduct I-9 document inspection for remote employees.
- Create a system for reminders when reverification of work authorization is needed.
- Develop training program for those in charge of completing the employer section of the I-9 on proper I-9 procedures.
 - What documents are acceptable?
 - What is the I-9 completion deadline?
 - Ensure employers do not suggest or imply what documents an employee should show (to avoid a document abuse violation).
 - Ensure employer is not completing or pre-populating section 1. Only the employee can complete section 1.
 - Ensure all new hires are completing I-9's.
- Decide if a company is keeping copies of supporting documents for all I-9's, or not?
- If using vendor for I-9 completion or retention, ensure:
 - You can access the records upon demand.
 - You can run reports including audit trail reports.
 - I-9's are being properly completed and retained.

- Purge I-9's after required retention period lapses.
 - Create a system to regularly purge I-9's.
- Determine I-9 document retention system.
 - Hard copies or electronic retention?
 - Ensure they can be recalled upon demand.
 - Ensure the system keeps audit trail of when created, modified, etc.
 - Keep separate from personnel records file.
- Decide whether to enroll in E-Verify.
 - If you enroll, it allows you to use remote document inspection procedures when completing the I-9.
 - Are you required to be enrolled in E-verify due to federal or state requirements?
 - Ensure company is regularly running Status Change Reports.
 - Decide how long to give employees to resolve Tentative Nonconfirmation.
 - Ensure that every new hire is put into E-verify once enrolled.

Worksite Enforcement Visits and Raids

- Prepare and document a plan on how to handle governmental workplace enforcement visits and raids, like:
 - What to hand over and when you can say no.
 - Who can be there during interviews and site visits.
 - Who to contact and in what order.
 - What to do if an employee is detained.
 - What can you copy and video?
 - What if they are looking for a third party's person or property, like a vendor, property owner, tenant, etc.
- Have a desk memo for the first point of contact at each site (ex: receptionist, security officer, etc.)

Hiring Practices and Visa Sponsorship Policies

- What can you ask a candidate pre-offer about their immigration status?
 - Review job application forms to ensure you are only asking legally permissible questions.
 - Train recruiters so they do not engage in discriminatory hiring practices.
 - Review job ads and postings to see what you have posted about visa sponsorship or immigration and citizenship conditions.
- What can you ask an employee about immigration status after hiring?
 - Determine a policy regarding how to handle situations where an employee says they will not need visa sponsorship but then does.
- Develop a policy regarding work authorization sponsorship.
 - Will you sponsor a foreign national for work authorization?
 - Will it depend on job category or other factors?
 - Will you sponsor a foreign national for a green card?
 - Will it depend on job category, length of service, or other factors?
 - Develop a policy specifying who will pay for sponsorship fees and costs.
 - NOTE:** H-1B and PERM costs must be paid by the employer only.
 - Will the company pay for legal fees, filing fees, translation costs, or degree evaluation costs involved in work authorization or green card sponsorship?
 - If the employee is paying, will they pay the costs directly or reimburse the company?
 - If the employee is paying, can they choose the law firm they want to use or must they use the company's firm to ensure consistency, reliability, transparency, and control?
 - Develop a reimbursement agreement for the employee's signature.
 - Will the company pay for fees and costs related to the spouse's and children's petitions?
 - Who will pay for premium processing costs (when they are unrelated to business needs)?

- Review offer letters to determine what you will say about sponsorship (if anything).

H-1B Program Compliance and Policy

- Ensure you have properly completed and retained public access files.
- Ensure each H-1B employee is:
 - Being paid at least the amount promised in the most recent H-1B filing.
 - Working at the location(s) specified in the most recent H-1B filing.
 - Working in the job and performing the duties listed in the most recent H-1B filing.
- File an amendment when there is any material change in the job or job location.
- When filing any H-1B, ensure consistent with prior, similar filings to the greatest extent possible.
 - Use the same SOC job code for the same or similar jobs.
- To maximize your chance at avoiding the new \$100,000 H-1B fee, develop a policy to obtain written confirmation from each employee prior to any H-1B filing (initial, transfer, extension, or amendment) that they are in the United States at the time of filing and that they will stay in the United States until it is fully approved.
- Develop a written policy regarding how you will handle the situation where the \$100,000 fee is triggered:
 - Will you withdraw the H-1B application, or will you pay the fee?
- When the H-1B is terminated earlier than the approvable notice expiration date:
 - Send a letter to the US Citizenship and Immigration Services notifying them of the date of the end of employment (to end your wage obligation to the employee).
 - Offer to pay for a one-way ticket back to the employee's country of last foreign residence (just for the employee, not family members).
- Ensure H-1B's are not "benched" (ex: cannot be furloughed or put in unpaid unproductive status due to business needs).

International Travel Risk Management and Policies

- Develop a written policy regarding what the company will do if an employee is outside the United States for an extended amount of time (ex: if they could not get a visa to return to the United States within the expected time).
 - How long will you keep the job open?
- Develop a written policy requiring prior authorization before international travel by foreign nationals (to ensure they have the proper documents and authorization for timely US reentry and to prepare for travel risks).
 - How far in advance must the approval be requested?
 - What are the dates of travel and places visited (check for impact of travel bans and increased scrutiny upon US reentry).
 - Must they show you proof of a confirmed visa appointment or a visa valid for the duration of the trip before traveling?
 - Are they authorized to work while outside of the United States?
 - If so, for how long?
 - If so, can they use company-issued devices like software or servers?
- Develop a written policy regarding the use of company-issued electronic devices and servers while outside of the United States.
 - Does it vary by country visited?
 - Are employees permitted to take or use company-issued electronic devices (computers, phones, etc.)?
 - If so, should any applications or data be deleted before travel?
 - What to do and who to contact if devices are searched by government officials.

Mergers and Acquisitions

- Include in due diligence, questions like:
 - I-9 compliance.
 - E-verify use and compliance.
 - Whether they have ever been audited, visited, or investigated by the government for any immigration-related compliance or issues.
 - List of all foreign national employees, their immigration status and expiration dates, and whether they have started the green card process.
 - Whether they have any immigration-related policies (like re-sponsorship eligibility)
 - What their hiring practices are with immigration status and work authorization questions.
- Determine how to handle I-9's.
 - Will employees be terminated and rehired, or will there be continuous employment?
 - Is the employer's identity or federal tax identification number changing as a result of the transaction?
 - Will you assume liability to existing I-9's or have employees complete new I-9's?
- Add language into transaction documents regarding:
 - How you are handling I-9's.
 - Indemnification for I-9 violations levied in the future.