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Brian E. Curtis, Esq.  
Stryker, Tams & Dill LLP

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# EMPLOYMENT NEWS ALERT

## *SEPTEMBER NEWSFLASH*

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### *HUMAN RESOURCES IMMIGRATION POLICY A STRATEGIC VIEW*

*AN HR IMMIGRATION POLICY:  
DOES IT REALLY IMPACT THE BOTTOM LINE?*

*The short answer ... yes and no!*

As a business professional involved in Human Resources, do you find yourself hearing this kind of open-ended answer with increasing regularity as our fast-paced global economy becomes ever more intertwined?

Whether you are the VP of HR or just starting out as a generalist, or whether you are the General Counsel or the in-house staff counsel specializing in employment law, with all of the news lately about immigration reform it can be frustrating to try and figure out where your Company's 'immigration' policy fits into its overall HR framework. You know you need it, you know you have it, but does it work and, more importantly, does it contribute to the Company's 'bottom line'?

A strategic view of immigration management is necessary as your Company's growth intensifies, especially now as the U.S. economy attempts to navigate its way out of the Great Recession. Continued high unemployment, coupled with persistent low job growth, has fostered the sense among U.S. workers that foreigners are 'stealing' their jobs. This difficult environment make it all the more important for your Company to have the right immigration policy in place, one that is specifically tailored to the Company's needs within its industry while simultaneously being broad enough to avoid restricting any growth potential.

ENA believes the 3 main points below can provide any organization with a solid foundation to structure a sound and successful immigration policy. Do you see a theme here? Collaboration is the key.



1. MARRY YOUR INFORMATION SYSTEMS
2. CONNECT WITH OTHER DEPARTMENTS
3. PARTNER WITH YOUR CANDIDATES

To MARRY your information systems, integrate an immigration management software with your Company's HRIS and automate as much of the process as you can, allowing HR to receive daily reminders of H-1B visa applications status, I-9 verifications, visa expirations, etc.

To CONNECT with other departments, develop a framework within your Company allowing access and notification across multiple departments on immigration policy issues. As an example, your Company is considering promoting an employee who is a foreign national working here with an H-1B visa. Will the promotion affect his current work authorization? How will the promotion affect the status of any dependents? Will there be a need for permanent residency sponsorship? What are the tax implications for this employee? Will an export license be necessary in his future position? It is likely that no one person in your organization could answer all of these questions.

To PARTNER with your candidates, open the process to all of your affected candidates and employees, but do so by way of a separate database, of course, to ensure the security and confidentiality of the Company's information. Put the immigration policy in writing, put it in all of your Company's employment materials, and make it readily available.

In this way, your Company minimizes the chances that its import delivery schedules fail causing depleted inventories and lost revenue, or that its foreign workers overstay their visas causing fines and penalties to accrue. As you can see, your immigration policy does impact the bottom line!



## ***SPECIAL GUEST AUTHOR SERIES***

*From time to time, ENA will invite a guest author to present an insightful topic-related article. This month, David Nachman, Esq., has offered to provide ENA with the following free information.*

### Don't Be Caught Off-Guard: CIS H-1B Site Visits are in Full Swing

For the past few months, the U.S. Department of Homeland Security, Citizenship and Immigration Services ("CIS") has conducted an investigation program aimed at visiting H-1B petitioner worksites throughout the U.S. These site visits began as part of the CIS' goal to decrease the number of H-1B violations and instances of fraud reported by the H-1B Benefit Fraud & Compliance Assessment from CIS' Office of Fraud Detection and National Security ("FDNS"), published this past September. According to the FDNS' findings, as many as one in five H-1B applications were affected by either fraud or "technical violations" of the H-1B program.

Why should employers care? Any employer who sponsored a foreign national worker for an H-1B visa can be subject to an unannounced site visit. What this means is that an investigator can randomly show up at a worksite and demand to

see a copy of the H-1B petition, interview the person who represented the company in connection with the H-1B as well as the H-1B employee or other employees presently on site. Any inconsistencies found can mean big trouble for employers.

FDNS has indicated that it does not need a subpoena in order to complete the site visit because USCIS regulations governing the filing of immigration petitions allow the government to take testimony and conduct broad investigations relating to the petitions. However other sources say that employers are not required to give in to the investigators' demands without a subpoena. What to do? Our office recommends that you always comply as much as possible with any investigative agency that shows up at your door. CIS has indicated that attorneys can be present during an inspection, but the investigator is not likely going to come back another day if the attorney is not available on the day of the unscheduled visit. Attorneys may be present via telephone in these circumstances.

Some common questions that have been raised by employers include: "how are companies selected to be investigated," "if I am visited, should I be concerned," "what type of violations are the investigators looking for," and "how can I prepare for a site visit from a CIS/FDNS investigator?"

To address these issues in order, firstly any employer who has filed an H-1B petition can be subject to a site visit. While CIS claims the employers are chosen at random, close to 40,000 employers' names have been selected for site visits. Some factors that may have been taken into consideration when selecting these 40,000 employers include: companies with less than 15 employees; companies with less than \$10 million in sales; companies less than 10 years old; accounting, HR, business analyst, sales and advertising positions; and petitions where the beneficiary merely had a bachelor's degree, not an advanced degree.

If your company is visited and your records are in order, you have nothing to worry about. Generally speaking employers are aware of inconsistencies before any investigative agency may catch wind of it. That being said, if the investigators uncover any inconsistencies or instances of fraud, the case may be referred to U.S. Immigration and Customs Enforcement (ICE), or the Department of Labor (DOL) for further investigation depending on the offense. This could mean there will be monetary, and if egregious offenses, possible criminal penalties for the employer.

The objective of the unannounced on-site visits is clear: to detect fraud and abuses of the visa program. According to USCIS, the offenses range from technical violations to outright fraud, with the most common violation being the non-payment of a prevailing wage to the H-1B beneficiary. More specifically, the investigators may be looking for the following types of violations: job location not listed on the H-1B petition and/or LCA; H-1B worker not receiving the required wage; fraudulent H-1B documents or H-1B worker credentials; non-existent business or office location; job duties significantly different from those listed on H-1B petition/LCA; misrepresentation of H-1B status by the H-1B worker (e.g., had been terminated from previous H-1B position prior to new employer H-1B being filed); and H-1B worker paid the \$1500 ACWIA fee.

How can you prepare yourself and your company for a possible site visit? Step one is to ensure that you have Public Access Files (PAF) for each H-1B worker, and that the PAF documents are accurate and up to date. In general, it is a good idea to review and audit your H-1B/LCA records to make sure everything is in order and all information is readily available. Designate a specific individual at each H-1B worker location to meet the investigator should he/she arrive. Prepare a quick list of facts about the company and also a listing of H-1B workers, work locations, title and salary information so you don't need to search frantically for this information while the investigator is there.

If you are not sure what a PAF is, or if you'd like to have your documents reviewed by legal counsel, you may contact [WWW.VISASERVE.COM](http://WWW.VISASERVE.COM).



## *What Can Employers*

## ***Do Right Now?***

### ***Ask Us ... We Can Help***

I-9 audits are on the rise, as are other immigration-related enforcement actions - don't get caught 'short'!

Brian E. Curtis, Esq. and the firm of Stryker, Tams & Dill can help you navigate these issues and avoid fines, penalties, and potential lost revenues. Reach out now!

Remember, you can also view us at <http://community.icontact.com/p/brianecurtisemploymentnewsalert> just copy and paste this address into your browser and you can instantly see our fresh and exciting new formats. To make it easier here, and more readily accessible to our subscribers, we are going to continue our basic format for the newsletters posted to our website.

Brian E. Curtis, Esq.  
Stryker, Tams & Dill, LLP

(732) 277-8261

[becurtis@strykertams.com](mailto:becurtis@strykertams.com)

(973) 491-9500

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