

# IMMIGRATION COMPLIANCE: Avoiding the Pitfalls

## situation

Companies need to maintain access to quality foreign talent, comply with regulations and avoid the negative publicity that accompanies an undocumented worker problem. Immigration compliance is fraught with pitfalls, especially for a corporation with thousands of employees working in multiple states and at different types of facilities.

## in-house counsel challenge

Inside counsel is charged with ensuring U.S. Immigration Reform and Control Act (IRCA) compliance measures are in place and applied consistently and corporatwide. This includes training human resources staff—as well as key contractors—on the ins and outs of IRCA compliance. Failure to comply with relevant immigration laws can lead to severe civil—and potentially criminal—penalties for employers.

## approach adopted

Strictly enforcing hiring procedures corporatwide is imperative, especially in light of the dramatic increase in government enforcement efforts. IRCA violators, once charged civilly, are now facing criminal indictments. Demonstrating uniform hiring procedures throughout the company is a powerful defense.

Focus on how you manage Employment Eligibility Verification Forms, commonly referred to as I-9 Forms. Employers must balance the need for strict verification procedures with sensitivity to the risk of an anti-discrimination claim by a foreign employee.

Make sure I-9s are easily accessible should a government raid or audit ensue. Keep the forms separate from personnel files to prevent inadvertent disclosure of employee information during investigations. Don't overlook outside contractors. Notify your cleaning company or other potentially vulnerable corporate contractors in writing that fulfilling IRCA requirements is its responsibility, not yours.

Establish a tracking and auditing system to ensure all relevant work visa dates are observed. An old-fashioned tickler file will help, as will quarterly in-house audits and annual audits by outside immigration counsel.

Finally, establish a program that outlines how the company will react to a government raid or audit. Your internal response team should include members of the legal, human resources and external communications departments.

## implementation steps

- Train HR and key contractors in critical IRCA compliance measures.
- Work with HR to establish consistent corporate immigration policies.
- Implement a work visa (H-1B) document management system to track critical deadlines.
- Establish ongoing audit processes to regularly document IRCA compliance measures.
- Create an internal response team to handle government raids and audits.

## measuring success

Having well-organized immigration procedures can prevent or at least undercut the impact of any IRCA compliance violations. Staying abreast of your work visa requirements will maintain the flow of quality foreign talent into the company and keep the employees in place for the duration of their assignment.

## future issues to consider

*Comprehensive immigration reform may overhaul the immigration system and would change the landscape for employers. Continued heavy immigration enforcement is expected, with an enhanced focus on criminal penalties.*



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