

Procedures for USCIS H-1B & L-1 Site Visits

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Some may wonder why there is the \$500 fraud fee required for certain H-1B and L-1 filings. The answer is that in 2004, USCIS created the Office of Fraud Detection and National Security (FDNS) to identify fraudulent H-1B and L-1 filings within our immigration system. FDNS Officers travel to worksites to confirm that everything included in the H-1B or L-1 filing is accurate and legitimate. The \$500 fraud fee funds FDNS activities for these site visits and investigations.

FDNS conducted about 12,500 worksite visits in FY 2019 and their plan is to conduct a similar amount in FY 2020. Below are some tips on how to put simple procedures in place to plan for an FDNS site visit.

I. Background on Worksite Visits & Increased Enforcement

A memo released in April 2009 from the Department of Homeland Security (DHS) outlined a change in worksite enforcement strategy from focusing on individuals to focusing on employers. The memo reads:

“Enforcement efforts focused on employers better target the root causes of illegal immigration. An effective strategy must do all of the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; and 3) encourage all employers to take advantage of well-crafted compliance tools.”

This change in enforcement strategy was initially evidenced in July 2009 when Immigration and Customs Enforcement (ICE) notified 652 businesses that it would be auditing their records to ensure everything is in compliance with employment eligibility provisions. ICE will continue to send out more Notice of Inspection notices to employers in order to audit I-9 records.

Additional recent evidence of this shift in strategy can be seen in the precipitous increase in worksite visits by CIS’ Office of Fraud Detection and National Security (FDNS).

USCIS conducts worksite visits of U.S. companies and other entities that employ foreign workers through H-1B and L-1 petitions. These worksite visits are carried out by CIS’ Office of Fraud Detection and National Security (FDNS). The primary mission of the FDNS is to detect, pursue and deter immigration benefit fraud. The program is funded through the \$500.00 fraud fee required with initial H-1B or L-1 filings.

II. The FDNS Worksite Visit

In most cases, a FDNS worksite visit will be unannounced and last approximately 30-60 minutes. The visit may occur at the employer's principle place of business or the specific worksite of the H-1B/L-1 employee.

What Does the FDNS Worksite Visit Entail?

The FDNS investigator will usually ask to meet with a company representative as well as the H-1B/L-1 foreign national employee. The investigator may request to see the employee's actual worksite and may take photographs for his/her record. The investigator may also request to speak with a co-worker or supervisor of the foreign national employee and/or request certain documents relating to the foreign national's H-1B or L-1 paperwork.

What Types of Questions Will the Investigator Ask?

The FDNS investigator will normally seek information relating to the petitioning employer; the relationship between the petitioner and beneficiary; whether the beneficiary is or will be employed in the capacity described and at the location(s) specified in the petition; and whether the beneficiary has the requisite experience and/or qualifications.

Specifically, inquiries from the FDNS investigators have focused on the following areas:

- Details about the employer, including ownership structure, tax returns, quarterly wage reports, and/or other company documentation, office locations in the U.S., number of H-1B, L-1 and other petitions and recent layoffs;
- Employer policies with respect to immigration matters, including sponsoring individuals for non-immigrant and immigrant petitions, prevailing wage surveys and any repayment agreements;
- Details about the specific petition under investigation including job title, duties, day-to-day functions, salary, work schedule, work locations and dates of employment; and
- Qualifications of the H-1B or L-1 employee, including education, work experience and prior immigration history.

III. Preparing for an FDNS Worksite Visit

Most FDNS worksite visits will be unannounced. Employers should therefore prepare procedures ahead of time. In order to prepare for an unannounced FDNS worksite visit, employers should undertake the following:

(1) Designate a company representative who will meet and deal with the FDNS investigator. (Include a back-up individual in case the primary individual is unavailable for any reason) The company representative should accompany the FDNS investigator at all times and take detailed notes of questions asked and answered. The company representative should not allow any employee to be questioned alone and should not allow the FDNS investigator to wander the premises unescorted.

(2) Make sure you have the name(s) and contact info for corporate and immigration counsel to contact in the event of an unannounced FDNS visit.

(3) Conduct an internal review of the employment of all H-1B and L-1 employees to ensure that their job duties, worksites and salary are consistent with the respective immigration petition filed on their behalf. In addition, employers should review the Public Access File for each H-1B worker to ensure that it contains all of the necessary documents required by the Labor Condition Application (LCA) and Department of Labor (DOL) regulations.

**Our firm is experienced with DOL regulations and the documents/information that must be maintained in the Public Access file. Please contact us anytime if you have any questions about LCA compliance and Public Access Files.

(4) Inform all company personnel such as receptionists, managers etc. of the possibility of an FDNS worksite visit and let them know what to expect and how to address the FDNS investigator.

(5) Retain complete copies of all Form I-129 petitions and paperwork in separate files from the Public Access Files. ***This paperwork should be kept separate from any Public Access File.***

(6) Make sure that the foreign national employee and his/her manager are aware of the content of the I-129 petition and supporting documentation relating to the sponsored position, employee's work history etc.

(7) If the employee is working at a worksite not controlled by the company, that separate entity should be notified of the potential of an FDNS worksite visit and the proper procedures to follow.

IV. FDNS Worksite Visit Guidelines

If you are the subject of an unannounced FDNS worksite visit, we recommend that you cooperate with the investigator and answer questions to the best of your ability. The company representative assigned to handle the visit should follow these general guidelines:

(1) Meet with the FDNS investigator in a conference room rather than in your office;

(2) Request the name, title and contact information for the FDNS investigator. Request a business card with a number to call and confirm the investigator's credentials before continuing with the visit;

(3) Request to be present during any interviews of any employees;

(4) Accompany the investigator during his/her review of your facility;

(5) Do not guess or speculate for any answers. Do not be afraid to say "I don't know" if you are unsure of the correct answer or information;

(6) Take detailed notes about all of the investigator's questions and where the investigator visited within your facility. All notes should be labeled "Privileged and Confidential/Prepared at the Direction of Counsel";

(7) Make a note of any documents that the investigator reviewed;

(8) If the investigator requests to see documents, ask the investigator to be very specific about what documents s/he would like to review. Do not hand over full files without knowing what has been requested and for what purpose. Do not allow the investigator to remove any documents from your files. If the investigator requests copies of any documents, inform the investigator you will prepare copies of everything and will forward them to his/her address;

(9) Do not hand over any documents to the investigator for review that are private or confidential, or that was not specifically requested by the investigator;

*** Watch out for scammers within the fraud check—Do not provide any information that makes you uncomfortable. If you suspect something is not legitimate, contact immigration counsel or corporate counsel right away.

You should contact immigration counsel or corporate counsel right away if an investigator makes an unannounced visit at one of your locations.

Please contact [me](#) anytime with any questions about preparing for an unannounced FDNS worksite visit.

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