

# Alerts & Publications

PDF



## New Program Launched to Audit H-1B Visa Program Includes Unannounced Site Visits to H-1B Employers

October 9, 2012

The U.S. Citizenship and Immigration Services ("USCIS") Office of Fraud Detection and National Security ("FDNS") recently began an audit of the H-1B employment visa program. Investigation questionnaires are being sent to present and former H-1B workers, requesting information regarding H-1B workers' employment history, educational background, job duties, salary and work location.

The audit also includes unannounced site visits by FDNS officers to H-1B employers and interviews with H-1B employer representatives, H-1B workers and other colleagues and/or managers who work with H-1B nonimmigrants.

### I. H-1B Investigation Questionnaire

Click [here](#) to access a copy of the H-1B investigation questionnaire sent to present and former H-1B workers by the USCIS Department of Labor's Wage and Hour Division.

### II. FDNS Site Visits

- FDNS site visits are usually unannounced.
- The site visit may occur at the H-1B employer's principal place of

business and/or at the H-1B nonimmigrant's work location, as indicated on the H-1B worker's I-129 sponsorship petition.

- Site visits usually last one hour or less.
- The employer may request that its immigration attorney be present during the site visit, but FDNS will not reschedule the site visit so that the attorney can be present. FDNS will allow the attorney to be present by phone.
- Site visits will focus on a specific H-1B petition and a specific H-1B worker (regardless of the number of H-1B petitions filed by the employer).
- The FDNS officer will usually have a copy of the H-1B petition.

### **FDNS Interview With Employer Representative**

- The FDNS officer will request to speak with the employer's representative who signed the I-129 petition. If the employer representative is not available, the FDNS officer will request to speak with another employer representative (e.g., the Human Resources Manager).
- The employer representative should, if practicable, speak to the FDNS officer only with a witness present.
- The FDNS officer will verify the information contained in the H-1B worker's I-129 petition.
- The FDNS officer may also take a writing sample from the employer representative to verify that the signature on the I-129 petition is authentic.

### **Information That The FDNS Officer Is Likely To Request**

- Specific information regarding the employer:
  - Nature of business
  - Locations of offices
  - Number of employees
- Detailed information about the H-1B worker's job title, job duties, work location and salary.
- Number of H-1B petitions that the employer has previously filed (usually over a 10-year period).
- Information regarding the employer's immigration attorney (name, firm, address of firm, length of time attorney has been retained by the employer, number of H-1B cases (and other immigration cases) processed on behalf of the employer by the attorney or firm).

### **Documentation That The FDNS Officer Is Likely To Ask To Review**

- The employer's tax records.
- The employer's quarterly wage report.
- Other documentation to verify that the employer is a bona fide business.
- A copy of the H-1B worker's most recent pay stub and Form W-2.

### III. Tour Of Employer's Facility

After speaking with the employer representative, the FDNS officer may request a tour of the employer's facility and may take photographs of the worksite.

### IV. FDNS Interview With H-1B Worker, Colleague Of H-1B Worker, And/or H-1B Worker's Manager

After touring the employer's facility, the FDNS officer may request an interview with the H-1B worker.

#### **Information That The FDNS Officer Is Likely To Request From The H-1B Worker**

- Dates of employment.
- Job title.
- Job duties and responsibilities.
- Job location.
- Requirements for position held by H-1B worker.
- Academic background and previous work experience.
- Current address.
- Verification of any dependents in the U.S. with H-1B worker.

#### **Information That The FDNS Officer Is Likely To Request From Colleague Of H-1B Worker And/Or H-1B Worker's Manager**

- Verification of H-1B worker's position with the employer.
- Job duties and responsibilities.
- Requirements for position held by H-1B worker (to verify that the H-1B worker is performing the duties stated in the I-129 petition).

The employer representative and witness should be debriefed by the employer's immigration attorney as soon as possible following the site visit. If this is not possible, counsel should direct the employer representative and witness to prepare notes of what occurred at the interview, to label the notes "Privileged & Confidential/Prepared at the Direction of Counsel for Purposes of Obtaining Legal Advice" and to submit the notes to the attorney for review and retention.

### V. How Should An Employer Representative Be Prepared For An FDNS Audit?

- Thoroughly read the entire H-1B visa petition (forms, employer support letter, supporting documentation) before signing to ensure that all

information in the petition is factual and accurate.

- Retain a complete copy of the H-1B petition for each worker sponsored by the employer in a confidential file that is maintained by the designated employer representative.
- Provide the H-1B worker with a copy of the H-1B petition to familiarize the worker with the nature of the employment sponsored, the conditions of employment and the education and prior work history documented in the H-1B worker's petition.
- Advise personnel responsible for greeting visitors at the employer's premises that it is policy not to admit any unauthorized persons to private areas of the worksite — including government employees — without approval of a designated employer official.
- Ensure that the designated employer official is knowledgeable of the employer's H-1B visa program (and any other immigration work programs) and the conditions under which visa-sponsored workers are employed.
- Advise employer representatives to request the name, title, agency and contact information of the FDNS officer conducting the site visit. The employer representative should request a business card with a phone number to obtain confirmation of the officer's credentials, if necessary.
- Advise the employer's immigration attorney of the FDNS site visit prior to the beginning of any interviews of employer representatives to provide an opportunity for the attorney to participate in the interview in person or by phone.
- Do not give FDNS officers access to secure areas of the employer's premises or work areas for tours or photographs. If the FDNS officer requests access to secure areas, explain the sensitive nature of the work area and offer less sensitive areas of the workplace to conduct interviews or photograph.
- If an FDNS officer requests information from the employer that the employer representative does not know or cannot readily and accurately provide, the representative should inform the FDNS officer that additional research is needed to locate the information and offer to provide the information to the officer in a follow up communication. The employer representative should not speculate about the information requested by FDNS during the site visit.
- Accompany the FDNS officer during the tour of the employer's facility and, if possible, be present during the interview of the H-1B worker and any other employees. If the FDNS officer does not allow the employer representative to be present during the interview of the H-1B worker or other employees, the representative should include the denial of request to accompany in the notes to the attorney following the interview.
- If the H-1B worker is placed at a client site that is not overseen by the H-1B sponsor, the H-1B employer should notify the end user of the current FDNS H-1B audit program and the possibility of a site visit by FDNS. The end user should be made aware of the identity of the H-1B employer and review the terms of the assignment. The end user should also contact the H-1B employer at the beginning of the FDNS site visit so that the H-1B

employer representative may be present in person or by phone during the end user's site visit.

Quick links +

Subscribe

' ! \$ #

[Disclaimer](#) | [Privacy Policy](#) | [Contact Us](#) | [Employee Portal](#)  
Attorney Advertising © 2019 O'Melveny & Myers LLP. All Rights Reserved.