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## Ten Immigration Compliance Tips for Health Care Providers and Businesses

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In today's complex and rapidly evolving immigration landscape, health care providers and businesses that employ foreign nationals (more than 25% of physicians in the United States are foreign-born) must be proactive in ensuring compliance with federal law and regulations. The risks of non-compliance—

ranging from fines to workforce disruptions—are higher than ever, especially in an era of heightened scrutiny by U.S. immigration authorities.

Adding to these challenges, a recent memorandum from the U.S. Immigration and Customs Enforcement (ICE) rescinded the “sensitive locations” policy, which previously restricted ICE enforcement actions in hospitals, clinics, and other health care settings. This policy shift means that immigration enforcement actions, including workplace visits and audits, are now a real possibility within health care facilities, raising compliance concerns for employers, institutions, and personnel.

## **No Reported ICE Raids in Health Care Facilities to Date**

While concerns about increased enforcement are valid (and have sparked a drop in hospital visits), as of this writing, we are not aware of any confirmed reports of ICE conducting raids in hospitals, surgery centers, or other health care businesses. Still, with the new policy in place, health care employers must remain vigilant and prepared for the possibility of future enforcement actions.

To help you navigate these challenges, we have compiled ten essential immigration compliance tips that every health care employer should know.

### **1. Anticipate ICE Enforcement Actions, Including Raids in Health Care Facilities**

With the federal government’s increased focus on immigration enforcement, health care providers should prepare for the possibility of ICE actions in their facilities. This is particularly critical in light of the recent revocation of protections for hospitals and clinics, which had previously been designated as off-limits for enforcement actions.

To minimize operational disruptions and protect employees, independent contractors, and patient rights (e.g., HIPAA), employers should:

- a. Develop and implement a response plan for handling ICE visits.
- b. Train front-desk and security personnel on how to verify warrants before granting access to non-public areas.
- c. Educate all staff on how to safeguard protected health information (PHI) during enforcement actions.

### **2. Know the Difference Between Warrants and Subpoenas in ICE Investigations**

ICE enforcement actions often involve warrants and subpoenas, but not all warrants are created equal. Employers must understand:

- a. The difference between a judicial and administrative warrant—only judicial warrants require compliance, absent exigent circumstances (such as some sort of urgent national security or public safety threat).
- b. The difference between a warrant and a subpoena—a warrant allows ICE to enter premises, while a subpoena requests documents.
- c. The distinction between judicial and administrative subpoenas—different compliance obligations apply.

Understanding these distinctions can prevent unnecessary legal exposure and ensure compliance without overstepping legal obligations.

### **3. Prepare for Potential Form I-9 Audits**

The Form I-9 verification process remains a primary target of government audits. To maintain compliance:

- a. Ensure HR teams follow best practices for completing and retaining Form I-9 records.
- b. Perform periodic internal audits to identify and correct errors.
- c. Remember that if you plan to sell your health care practice or business, I-9 compliance issues can delay or derail transactions.

### **4. Avoid Discriminatory Hiring Practices—Know What You Can and Cannot Ask**

Employers must follow anti-discrimination laws when inquiring about a candidate's work authorization. Asking about specific visa types (e.g., "Do you have a green card?") is unlawful and can be deemed national origin discrimination. Employers must nevertheless inquire about work authorization.

Best practices include:

- a. Training hiring managers on proper ways to ask about work authorization.
- b. Updating job applications to remove improper questions.
- c. Ensuring HR personnel understand legal and illegal interview questions.

### **5. Implement a Strong Document Retention Policy**

ICE and Department of Labor audits often scrutinize immigration documentation. To reduce risk:

- a. Maintain organized records of visa petitions, labor condition applications, and employment authorization forms.
- b. Establish a secure digital storage system with controlled access.
- c. Retain immigration records for the legally required period (typically three years post-employment).
- d. Retain Form I-9 records indefinitely for all current employees, for three years after the date of hire, or one year after the date employment ends, whichever is later, for departed employees.

### **6. Maintain an Immigration Public Access File for H-1B Employees**

If you employ H-1B workers, you are required to maintain a Public Access File, which includes specific documentation about wages, working conditions, and compliance with labor laws. Many employers unknowingly fail to meet these requirements, which can result in penalties. If you are uncertain about your compliance, consult immigration counsel immediately.

### **7. Track Visa Renewal and Expiration Dates**

Employers should proactively track work visa expiration dates (H-1B, TN, O-1, etc.) to prevent lapses in work authorization. A missed renewal deadline can result in employment disruptions and legal complications for the employer, the foreign national, and his or her dependents on derivative visas. Employers should not assume that, after obtaining a visa for an employee, immigration counsel is tracking renewal and expiration dates unless agreed upon as part of the engagement.

Best practices include:

- a. Using automated tracking systems to monitor visa deadlines.
- b. Establishing a renewal workflow at least six months in advance of expiration.

## **8. Monitor Temporary Protected Status (TPS)**

If your workforce includes employees with TPS, be vigilant. The government has signaled its intent to curtail TPS protections, which could impact your employees' ability to continue working legally. With shifting immigration policies, TPS workers face uncertainty. Employers must:

- a. Stay informed about TPS designations and extensions.
- b. Assess the potential impact on affected employees.
- c. Explore alternative visa options for employees at risk.

## **9. Do Not Access Employees' Form I-94 Records Without Permission**

Form I-94 records are critical for determining an employee's authorized stay in the U.S. However, employers must not access Form I-94 records without the employee's written permission. Employers must:

- a. Obtain written permission before accessing an employee's (and their dependents') I-94 records.
- b. Train employees on how to verify their own records after international travel.

## **10. Double-Check USCIS Filing Fees and Locations Before Submission**

USCIS frequently updates filing fees and processing locations with minimal notice. Before submitting any petition or application, confirm the most current filing requirements. Sending applications with incorrect fees or to the wrong location can result in unnecessary delays or even outright rejections.

Best practices include:

- a. Confirm fees and addresses on the official USCIS website before submission.
- b. Use tracking services for mailed applications to ensure timely delivery.

# **Final Thoughts: Proactive Compliance Is More Critical Than Ever**

Immigration compliance is a legal necessity and a business imperative. The potential expansion of ICE enforcement to hospitals and health care facilities underscores the need for proactive preparation.

Health care employers must:

- Implement strong compliance policies.

- Train HR teams on proper hiring and documentation procedures.
- Seek legal guidance when necessary.

While there have been no reported ICE raids in health care facilities to date, employers should not assume that enforcement actions will not occur in the future. Being prepared is the best way to protect employees, avoid costly fines, and maintain operational stability in an increasingly complex regulatory environment.

If you have questions about your company's immigration compliance strategy, consult experienced legal counsel to ensure you are fully prepared and positioned for success.

## About the Authors

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