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Corporate Immigration Compliance: Preparing for Enhanced Enforcement Under Trump 2.0

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Introduction

As the United States prepares for another Trump administration, companies must ready themselves for potentially aggressive immigration enforcement policies similar to or exceeding those seen during the previous Trump presidency. This article examines the legal framework governing employer compliance with immigration laws, analyzes enforcement patterns from the previous administration, and provides practical guidance for companies to enhance their compliance programs.

The Immigration Reform and Control Act: Foundation of Employer Compliance

The Immigration Reform and Control Act of 1986 (IRCA) marked a fundamental shift in U.S. immigration enforcement strategy by placing significant responsibilities on employers. For the first time, employers faced civil and criminal penalties for knowingly hiring unauthorized workers. The Act established the employment verification system we know today and created a comprehensive framework of employer sanctions.

The criminal provisions that form the backbone of employer sanctions are primarily found in two key statutes. Under 8 USC § 1324, employers face criminal liability for bringing in and harboring unauthorized aliens, transporting unauthorized aliens, or encouraging or inducing unauthorized aliens to enter or reside in the United States. The statute also prohibits conspiring to commit any of these acts. Additionally, 8 USC § 1324a specifically addresses unlawful employment, providing for criminal penalties up to \$3,000 per unauthorized alien and imprisonment up to 6 months for pattern or practice violations, with enhanced penalties for multiple violations.

The mental state required for criminal violation of these statutes merits careful attention. While the standard is "knowledge," courts have consistently held that "willful blindness" satisfies this requirement. Willful blindness occurs when an employer subjectively believes there is a high probability that workers are unauthorized and takes deliberate actions to avoid learning the truth. This doctrine is particularly significant because it prevents employers from escaping liability by deliberately avoiding verification of workers' status when circumstances suggest unauthorized employment.

Form I-9 Requirements and E-Verify

The I-9 process, governed by 8 CFR § 274a.2, forms the cornerstone of immigration compliance for employers. Under these regulations, employers must verify both identity and employment authorization for all new hires, completing this verification within three business days of hire. These forms must be retained for three years after hire or one year after termination, whichever is later, and employers must re-verify employment authorization when temporary work authorization expires.



Administrative penalties for I-9 violations are substantial, ranging from \$234 to \$2,332 per violation for substantive paperwork violations, with significantly higher penalties for knowing employment of unauthorized workers.

While E-Verify remains voluntary for most private employers, it has become an increasingly important tool in immigration compliance. Federal contractors are required to use the system, and participation provides a rebuttable presumption of compliance with employment verification requirements. As immigration enforcement intensifies, E-Verify may become mandatory under new legislation. Most importantly, proper use of the system offers additional protection against charges of knowingly hiring unauthorized workers.

Enforcement Cases Under the Previous Trump Administration

The enforcement actions during the previous Trump administration provide crucial insights into what companies might expect in the coming years. These cases demonstrate both the administration's enforcement priorities and the complex ways immigration violations can intersect with other areas of corporate liability.

Asplundh Tree Experts

The 2017 Asplundh Tree Experts case stands as the most significant corporate immigration enforcement action to date, resulting in a \$95 million settlement. This case is particularly instructive because it demonstrates how corporate culture and management practices can create criminal liability even without direct evidence of knowledge at the highest levels.

Asplundh's regional managers and supervisors had developed a system where they would dismiss unauthorized workers when they received notice of social security number discrepancies, only to rehire the same workers through contractors or under different names. This practice formed the basis for charges of willful blindness against the corporation. The case highlighted how middle management's actions can create corporate liability even when senior executives are not directly involved in the violations.

The settlement included \$80 million in criminal forfeiture and \$15 million in civil penalties, making it the largest payment ever levied in an immigration case. Perhaps more importantly, the company was required to implement extensive compliance reforms, including mandatory E-Verify use, compliance training at all levels, and regular external audits. The case established a new benchmark for both penalties and compliance requirements in corporate immigration cases.

The Load Trail LLC Raids

The 2018 Load Trail case demonstrated the administration's willingness to use dramatic enforcement tactics and highlighted the personal risks to management from immigration violations. Immigration and Customs Enforcement (ICE) conducted a massive raid on Load Trail's Texas facility, arresting 160 workers in one of the largest workplace enforcement actions of the decade.

What made the Load Trail case particularly significant was the focus on criminal charges against management. Prosecutors alleged that company leaders had continued hiring unauthorized workers even after a previous ICE audit had resulted in civil penalties. This pattern of knowing violations led to criminal charges against multiple managers under both immigration statutes and other federal criminal laws. The case also revealed how ICE builds criminal cases through long-term investigations. Agents had spent months gathering evidence through surveillance, confidential informants, and analysis of payroll records



before conducting the raid. This methodical approach to building criminal cases represents a significant shift from previous administrations' focus on civil penalties and workforce removal.

HCL Technologies and Discrimination Liability

The 2019 HCL Technologies case highlighted an often-overlooked aspect of immigration compliance: the risk of discrimination claims arising from overly aggressive verification practices. HCL paid \$95,000 to settle claims that it had discriminated against U.S. workers in favor of visa holders. The company had allegedly created a two-tier recruiting system that gave preference to foreign workers, even when qualified U.S. workers were available.

This case demonstrates how companies attempting to address immigration compliance risks can inadvertently create liability under anti-discrimination laws. The settlement required HCL to revise its hiring practices and implement new training programs focusing on both immigration compliance and anti-discrimination requirements. The case serves as a warning that immigration compliance programs must carefully balance competing legal obligations.

CVE Technology Group and Systematic Violations

The 2019 CVE Technology Group case demonstrated the administration's focus on large-scale enforcement actions against companies with systematic violations. ICE conducted one of its largest workplace raids in recent history at CVE's Allen, Texas facility, arresting 284 employees on immigration violations. The investigation revealed a pattern of hiring practices that prosecutors alleged showed knowing employment of unauthorized workers over several years.

What made the CVE case particularly significant was its revelation of sophisticated methods companies sometimes use to appear compliant while knowingly violating immigration laws. Investigators discovered that the company had maintained two separate sets of employment records - one for official purposes that appeared compliant, and another that tracked actual employment practices. This type of systematic deception led to particularly severe consequences, including criminal charges against multiple levels of management.

The case also highlighted how immigration investigations often begin with seemingly routine tax or labor investigations. Initial scrutiny of CVE came from state workforce commission investigations into wage practices, which then led to the discovery of immigration violations. This interconnection between different types of workplace violations demonstrates why immigration compliance cannot be viewed in isolation from other aspects of workplace law compliance.

Advanced Containment Systems and Third-Party Liability

The 2019 prosecution of Advanced Containment Systems management revealed the government's growing focus on companies' use of staffing agencies and contractors to shield themselves from immigration liability. Prosecutors alleged that company managers had conspired with staffing agencies to maintain a workforce they knew included unauthorized workers.

The case demonstrated how prosecutors can use conspiracy charges to reach beyond direct employers to target companies that use staffing agencies as intermediaries. The charges included both immigration violations and other federal crimes, including money laundering and tax evasion, showing how immigration investigations often expand into other areas of corporate criminal liability.



Additional Legal Risks

The Expanding Scope of Criminal Liability

The risk of criminal prosecution for immigration violations extends well beyond the basic charges of knowingly hiring unauthorized workers. Federal prosecutors have increasingly used general criminal statutes to enhance immigration-related cases. The false statements statute (18 USC § 1001) has proven particularly useful, as it applies to any false statement made to federal investigators or in federal forms, including I-9 documentation.

Human trafficking charges under 18 USC § 1590 represent another significant risk, particularly in cases involving poor working conditions or wage violations. These charges carry potential 20-year prison sentences and mandatory restitution requirements. Prosecutors have successfully argued that knowingly employing unauthorized workers in substandard conditions constitutes trafficking when the workers' unauthorized status is used to prevent them from complaining about violations.

Immigration document fraud charges under 18 USC § 1546 can apply not only to workers who present false documents but also to employers who accept documents they know to be false or who assist in procuring such documents. These charges carry substantial penalties and can be brought against individual managers and supervisors who process employment paperwork.

RICO Implications and Civil Liability

The use of RICO in immigration cases deserves particular attention because it creates both criminal and civil liability risks. Criminal RICO charges in immigration cases typically allege that the company operated an enterprise through a pattern of immigration violations, often combined with other predicate acts such as money laundering or mail fraud. These charges carry potential 20-year prison sentences and massive forfeiture penalties.

Civil RICO cases based on immigration violations have become increasingly common, particularly as competitor lawsuits. These cases typically allege that companies gain unfair competitive advantages by systematically employing unauthorized workers at lower wages. The Mohawk Industries case established important precedent in this area, surviving multiple motions to dismiss and eventually settling for a substantial sum. The case demonstrated how civil RICO claims can survive even when criminal charges are not filed.

The potential for civil RICO claims creates particular risks because these cases can be brought by private plaintiffs, including competitors and labor unions. The availability of treble damages and attorney's fees makes these cases attractive to plaintiffs' lawyers, while the extended statute of limitations provides time to develop complex cases.

The Growing Impact of Whistleblower Programs

The Department of Justice's whistleblower programs have created new risks for employers by incentivizing employees to report immigration violations. These programs offer substantial monetary rewards, sometimes reaching 30% of any recovery, creating strong incentives for employees to report violations. The anti-retaliation provisions in these programs protect whistleblowers even if their allegations prove incorrect, as long as they were made in good faith.

The whistleblower provisions interact particularly dangerously with qui tam provisions that allow private individuals to bring suits on behalf of the government. These provisions effectively deputize employees



and others with knowledge of violations to act as private prosecutors, with the potential to share in any recovery.

Enhancing Corporate Compliance

Building Effective I-9 Compliance Systems

Modern I-9 compliance requires sophisticated systems that go well beyond basic form completion. Companies should implement electronic I-9 systems with built-in compliance checks and automatic flagging of potential issues. These systems should include:

- Real-time verification of document expiration dates and re-verification requirements.
- Automated compliance with retention requirements.
- Integration with E-Verify where required built-in audit trails for all system access and changes.
- Regular backup and security protocols.

Regular audits should examine not only technical compliance but also patterns that might suggest systematic issues. These audits should include statistical analysis to identify potential discrimination issues, such as disparate treatment in document requests or verification procedures.

Management Oversight and Corporate Culture

Effective compliance requires creating a corporate culture that values immigration compliance while avoiding discrimination. Senior management must demonstrate commitment through regular involvement in compliance reviews and swift action to address identified issues. This commitment should be reflected in:

- Regular board updates on compliance metrics and significant issues.
- Clear allocation of compliance responsibilities among senior executives.
- Integration of immigration compliance into corporate risk assessment processes.
- Regular review and updating of compliance procedures.
- Documentation of management oversight activities.

Managing Third-Party Risks

Companies must develop comprehensive programs to manage immigration compliance risks from vendors, contractors, and other third parties. These programs should include:

- Due diligence procedures that examine potential partners' compliance history and current practices.
- Contractual provisions requiring specific compliance measures and allowing for regular audits.
- Monitoring systems to identify potential issues before they become serious problems.
- Clear procedures for addressing violations, including contract termination provisions.
- Regular training for employees who manage third-party relationships.

Preparing for Enforcement Actions

Companies must prepare for potential enforcement actions before they occur. This preparation should include:

- Detailed written procedures for responding to various types of enforcement actions.
- Training for key personnel on their roles during enforcement actions.
- Established relationships with immigration counsel and public relations advisors.



- Procedures for protecting privileged materials and sensitive business information.
- Communications protocols for internal and external communications during enforcement actions.

Conclusion

The anticipated return of Trump administration policies suggests a likely increase in workplace immigration enforcement. Companies that act proactively to address these risks through comprehensive compliance programs will be better positioned to navigate the anticipated enforcement environment. The costs of non-compliance, both financial and reputational, far exceed the investment required for effective compliance programs. Success in this environment requires a commitment to compliance at all levels of the organization and a willingness to invest in the systems and procedures necessary to manage these risks effectively.

If you have follow-up questions on corporate immigration compliance, please contact Kripa Upadhyay or Joshua Robbins.

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