

EMPLOYERS NEED TO KNOW ABOUT THE DIFFERENT TYPES OF USCIS SITE VISITS.

At a November 19, 2009, program put on by the Department of Homeland Security, titled "2009 Government and Employers: Working Together to Ensure a Legal Workforce," Ronald Atkinson, Chief of Staff of USCIS' Fraud Detection and National Security (FDNS) office, explained the three types of site visits that are currently being conducted:

1. Risk Assessment Program fraud study. Applicable to any type of benefit program, including family and employment-based, this study is part of a joint program between USCIS and ICE. Applications and petitions are chosen at random, usually on a post-approval basis, for visits to help in designing profiles of potential fraud.

2. Targeted site visits. These visits take place where fraud is suspected, and consist of a visit to ask questions. Advance notice, including notice to counsel, is supposed to be provided.

3. Administrative site visits. These relate to religious worker and H-1B petitions. They generally are conducted by contractors who know nothing of immigration law. Religious worker visits are performed under the regulations for that category. For H-1B site visits, the contractors have been equipped with a set of specific questions, and all employers/beneficiaries should be asked pretty much the same questions, primarily reaching the issues of whether there's really an employer there, whether the employer knows it filed the petition, and whether the beneficiary is doing the work and receiving the wage indicated on the petition. H-1B visits are done on a post-adjudication basis, and are randomly selected. Each employer should receive only one such visit, but may receive different visits for different sites.

In April, DHS issued updated worksite enforcement guidance emphasizing ICE's major enforcement priorities—specifically focusing on dangerous criminal aliens and employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers. In this strategy, ICE identified form I-9 audits as the most important administrative tool in building criminal cases and bringing employers into compliance with the law.

Should anyone receive an inspection notice, it is imperative that you contact an immigration attorney immediately to verify compliance.