

Immigration Advisory



## **USCIS Rolls Out Full-Scale Implementation of L-1 Site Visit Program: Employers of L-1 Transferees Should Now Set up Processes to Prepare for Such Visits**

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U.S. Citizenship and Immigration Services' (USCIS) Fraud Detection and National Security (FDNS) Directorate has recently begun implementation of an L-1 site inspection program in response to an August 2013 report released by the U.S. Department of Homeland Security's Office of Inspector General (OIG) titled "Implementation of L-1 Visa Regulations." The report is available at [http://www.oig.dhs.gov/assets/Mgmt/2013/OIG\\_13-107\\_Aug13.pdf](http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-107_Aug13.pdf). The L-1 site visit program is funded by the \$500 Fraud Fee required for the initial filing of all L-1 petitions.

The OIG report was issued in response to concerns over fraud and abuse in the L-1 visa program, and in particular the new L-1 office petitions and L-1 extensions. The OIG strongly recommended that USCIS make site visits a mandatory requirement before renewing L-1 new office petitions. In response to the OIG report, USCIS has started conducting post adjudication domestic L-1 compliance site visits and expects to expand these visits to all individual L-1 petitions.

At this time, site visits will not apply to L-1 blanket petitions or beneficiaries as USCIS currently has no mechanism to identify L-1 admittees under the L-1 blanket program. However, if your company has filed an L-1 extension petition on behalf of an employee who initially came to the U.S. pursuant to an L-1 blanket petition, be prepared that you may have a site visit relating to that employee.

### **How Are Site Inspections Chosen?**

USCIS has indicated that it is going to start its L-1 site visits by performing post-adjudication approval site visits of L-1A petition extensions that were filed with a USCIS Service Center. It is unclear at this time when and if the L-1 site visit program will be expanded to include L-1B and blanket L-1 petitions. The site inspections are generally chosen at random, and performed without notice. The site inspectors are not authorized to make decisions on immigration benefit petitions or applications. However, if the site inspector has a concern, he or she will inform the agency about the concern, which could result in further communication by USCIS regarding the particular case.

### **Who Comes Calling on Behalf of the USCIS?**

The site visits are conducted either by USCIS employees or third-party contractors hired by USCIS to conduct the site visits. It is important to verify and record the identity of anyone claiming to be a government representative or agent. If you experience a site visit, the first step is to politely request to see the representative's identification to verify the legitimacy of the visit.

### **Will We Get Advance Notice of a Site Visit and Can Our Attorney Be Present?**

The procedure varies. Some companies are given advance notice of a site visit, and it is scheduled at the mutual convenience of the USCIS site inspector and company representative, in which case there is time to arrange for counsel to be present in person or by phone. More frequently, the site inspector arrives without warning.



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As site visits are frequently unannounced, employers should educate their receptionists at all worksites about the possibility of USCIS site visits and should have a procedure in place to contact the employer's primary in-house immigration manager. Once the designated company representative greets the site inspector and ascertains the purpose of the visit and which employee he or she is checking on, there should be time to make the site inspector comfortable in a waiting area or conference room while you contact counsel and obtain the relevant file(s).

### **What Is the Government's Objective in Conducting Site Visits?**

Typically, the site inspector needs to confirm that the employer is a bona fide organization that knowingly filed the visa petition for its employee, and that the employee is actually working for the employer in the position that was the subject of the visa petition, and at the wage promised in the petition. Typically, the site inspector is there to:

- Verify the existence of the petitioning U.S. employer
- Verify the information submitted with the petition, including supporting documentation submitted by the petitioner, based on a checklist prepared by USCIS
- Verify the identity of the foreign worker employee
- Verify the information submitted with the petition, including supporting documentation submitted by the petitioner, based on a checklist prepared by USCIS and review personnel documents such as payroll records
- Confirm the foreign worker employee's work location, employment workspace, hours, salary and duties
- Speak directly with the L-1 employee as well as with the company representative

### **What Questions Will the USCIS Site Inspector Ask?**

In most instances, the investigator will arrive with a copy of the petition and ask to meet with the company representative who signed the visa petition. (Often the person who signed the immigration paperwork is not available in person at the worksite in question. If this is the case, the task should be delegated to the designated company representative for that worksite. The company representative who signed the paperwork can participate by phone, if convenient.) The inspector will ask for basic information about the employer, such as the year of incorporation, locations of its offices, number of employees, and hours of operation. He or she will ask about the employee's title, job duties, and worksite and ask to see the office or cubicle where the employee works. He or she may also ask to be allowed to take photographs of the interior of the worksite. The inspector may also ask for the most recent pay statement and last W-2 issued to the employee to confirm that the employee is being paid the rate of pay promised in the petition of hire.

Employers of L-1 visa holders may face additional challenges as an L-1 visa holder is permitted to and may only work intermittently in the U.S., may be on a foreign payroll, may be assigned to a client (third-party) site, or may have changed work locations to another branch office of the L-1 petitioner. The employer must be able to articulate and explain to the satisfaction of the site inspector that these situations are permitted by the L-1 regulations. These site visits can be nerve-racking and cause anxiety to L-1 employees and to the company employees who are confronted with an unannounced site visit. Having a clear policy in place to deal with future site visits goes a long way towards alleviating such anxiety.

One of the most challenging aspects of the L-1 site visit is verifying that the L-1 employee is "working for the employer in the position that was the subject of the visa petition." As we know, titles and job responsibilities for employees are constantly changing as business conditions are constantly changing. Employers must file amended L-1 petitions whenever there is a significant and

material change in the L-1 employee's job duties. In the event of an L-1 site visit, if the employee's job has changed, the company representative must be able to explain why a change in job title and job duties was permissible without the filing of an amended L-1 petition or be prepared to provide a copy of the amended L-1 visa petition.

### **Update for I-9 and E-Verify Compliance and Inspections for Intermittent Employees Remaining on the Foreign Payroll**

In addition to the site visits that USCIS is conducting to verify the information contained in visa petitions filed by employers on behalf of their foreign workers, the Immigration and Customs Enforcement (ICE) division of DHS conducts targeted inspections of employers' Form I-9 records. Indeed, in 2013, ICE issued Notices of Inspection (NOIs) to 3,100 businesses across the U.S. The number of ICE I-9 inspections has tripled in a 3-year period, and all signs point to a continuing increase of I-9 inspections.

As ICE said in the announcement it made regarding this initiative, "Inspections are one of the most powerful tools the federal government has to enforce employment and immigration laws." ICE is committed to inspecting Forms I-9 to ensure that employers are in compliance with their I-9 obligations and that their employees are authorized to work in the U.S.

I-9 inspections are typically targeted as a result of leads and tips. When an employer receives an NOI, it usually has only three days' advance notice to prepare for the inspection, or less if ICE presents a search warrant. *It is critical that employers routinely conduct internal I-9 self-audits and engage in regular and systematic training of personnel with responsibility for I-9s to ensure that their I-9s are in order.*

Mintz Levin is available to conduct I-9 audits and training at your offices and through webinars, which can reach all employees responsible for I-9 compliance throughout a multi-office organization.

### **Be Prepared**

USCIS site visits and investigations frequently come without warning, and non-compliant employers are subject to serious fines and penalties. Accordingly, it is critical that your immigration files are in order and that you are prepared ahead of time:

- Ensure that your company has a designated point-of-contact in the event of a site visit, and a back-up person to assume this function if the designated person is out of the office on the day of the visit, and ensure that the staff are aware of who the contact persons are, and what the company protocol is, for escalating the site visit information to the appropriate company representatives.
- Ensure that your immigration files are in good order, including (1) copies of all visa petitions and approval notices; (2) up-to-date personnel records showing work location and salaries; (3) H-1B Public Inspection Files; and (4) I-9s. These files and electronic systems should be reviewed and updated annually. *Mintz Levin can assist with the audit of your files.*
- *Contact your Mintz Levin attorney immediately* if you receive any communication about a visit or inspection from DHS.
- *Ensure that you check with your Mintz Levin immigration attorney if you anticipate making any changes to a sponsored foreign national's position, job location, or wages.* In some cases, amended visa petitions must be filed or labor condition application notices must be posted at new worksite locations to keep your company in compliance.

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**If you have any questions about this topic, please contact the author(s) or your principal Mintz Levin attorney.**

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