

Essential Employment Law Knowledge for the Immigration Practitioner *(and Yes, I-9 Knowledge is Important and can Expand Your Expertise!)*

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Interactive Illustration of Scenarios Commonly Encountered by Business Immigration Practitioners in Representing the Employer

- Hiring a Foreign National (FN)
 - Offer Letter: what to include *and what not to*
 - At-will employment vs. implications of statements made in immigration filings
 - Employee contract: good immigration provisions
 - Non-compete clauses
 - Scope of legal representation

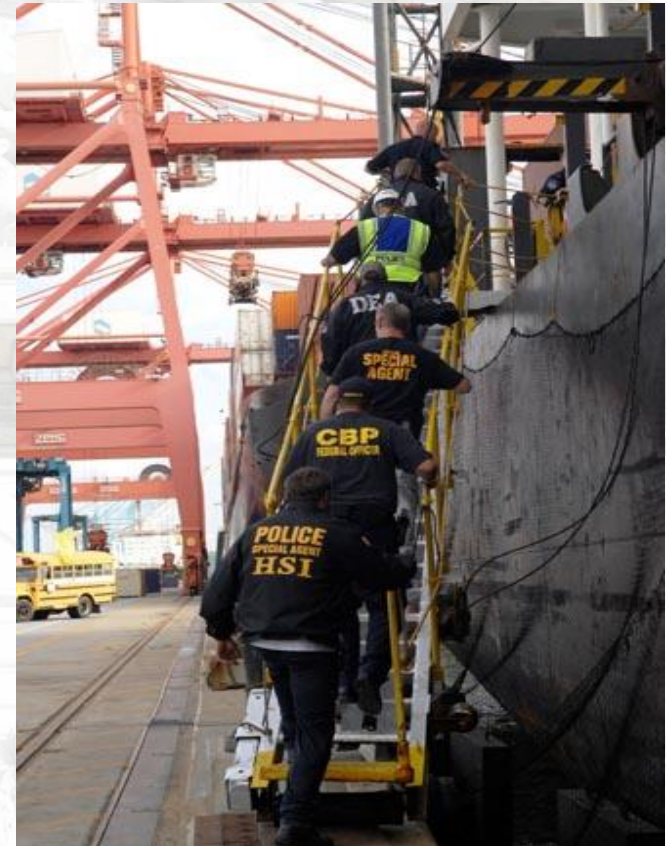
Interactive Illustrations Continued

- Fees and reimbursement of immigration expenses
- Fees for dependent family members
- Paying greater of the prevailing wage (8 C.F.R. § 655.731(a)(2)) or actual wage (8 C.F.R. § 655.731(a)(1))
- FN employee and maintenance of status
- Termination of FN employee
 - Obligation of return transportation expenses
 - Notify USCIS
 - Offer severance pay
- Promotions: amended petitions and salary changes

Interactive Illustrations Continued

- Starting the new job: Form I-9 and the Handbook for Employers (M-274).
 - Employee completes section 1 of the I-9 on the first day of hire
 - Eligibility documents and record keeping: List A or List B & C
 - Employer reviews original documents within 3 days of hire and completes section 2
 - Employer may not engage in prohibited discrimination (“document abuse”) by requesting too many documents or requesting particular documents
 - ❖ Importance of a corporate compliance policy for I-9’s/PAF’s

ICE: *oh no! when things go south....*



Worksite Enforcement

- What types of enforcement do we see?
 - I-9 Audits
 - Criminal Investigations and Prosecutions
 - Raids
 - Informal visits
- Shift in government focus from prosecution of undocumented workers to prosecution of employers

Investigation Triggers

- Tips to ICE
 - Current or former employees
 - Other
- I-9 Audits
- DOL – FLSA audits where investigators report findings to ICE
- Social Security No Match- SSA reports to ICE

ICE Factors for Penalties

- Size of business
- Company's good faith efforts to train staff to minimize exposure
- Seriousness of violation
- Whether the violation involved unauthorized workers
- Company's history of previous violations

Penalties Continued

- Criminal Penalties for Knowingly Hiring or Continuing to Employ
- IRCA –knowingly (or reckless disregard) “conceals, harbors or shields from detection” such alien in any place—10 years in jail and up to \$250,000 fine.