

Immigration Under Trump

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Trump, the candidate, made immigration a central focus of his campaign.

Launch the largest deportation operation in U.S. History aimed at undocumented individuals using federal immigration agents, military, national guard, and some state officers.

Return of travel bans.

Increased scrutiny of foreign nationals and their visas.

Worksite audits and raids.



President Trump lost no time acting on most of these – mostly through a flurry of Executive Orders.



Updates

- Do you have foreign national employees on payroll?
- Travel bans expected within 60 days of Executive Order (mid March)
 - Interrupt travel plans
 - Border disruption
 - Those out of country can't get back in
- Extreme vetting of those already in US:
 - New applicants
 - Employees changing status – student F-1 to H-1B etc.
 - Employees filing for extensions of existing status
- Added scrutiny for those outside US:
 - Applying for visas at consulates – risky, even for those with approved petitions
 - Potential delays through placement in administrative processing



Updates

- Impact recent tariffs on Canada and Mexico and revisiting USMCA (NAFTA) – potential impact to TNs
- Executive Order mentions going back 4 years to review earlier decisions – could revoke status.
- Big emphasis on compliance across the board
- Students, Post Grads
 - On optional practical training (OPT):
 - Ensure they have a valid Employment Authorization Document (EAD)
 - Have internal tickler system
 - On STEM OPT Extension
 - Must use E-Verify
 - Follow training plan (Form I-983)



H-1B Visa Program Updates & Reminders

- H-1B Lottery Registration: **Opens March 7, 2025- Ends March 24, 2025**
 - Registration fee increase from \$10 to \$215 per foreign national registered
- True lottery
 - 85,000 spots available
 - 20,000 reserved for those with a U.S. Master's Degree
 - 2024 Lottery: 479,953 registrations filed
 - If a foreign national will run out of status if they are not selected, consider alternatives



H-1B Visa Program Updates & Reminders

- H-1B Modernization Rule (new)
 - The degree identified as a requirement for entry into the position must specifically relate to the duties of the position
 - “Port” petition allows employer to transfer employee already in H-1B status with another employer without having to go through the lottery and can employ individual upon the filing of the petition
 - ***New requirement:*** For amended petitions, employer must have approval before making changes to employment



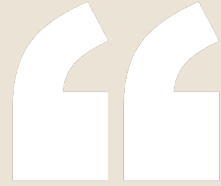
H-1B Visa Program Updates & Reminders

- H-1B Modernization Rule (new) (*continued*)
 - On-site inspections:
 - At primary place of business
 - At home for remote workers
 - Failure to cooperate can result in revocation of petition for foreign national, as well as other foreign nationals at site
 - ***Have a protocol in place***
 - Comply with Public Access File requirements
 - LCA documentation
 - Wage rate documentation
 - Job description



Update on Laken Riley Act.

- Laken Riley Act signed into law January 29, 2025
- Aimed at not allowing release of unauthorized aliens arrested, etc. for certain crimes
- Requires mandatory detention – in removal proceedings ineligible for bond
- Language includes
 - (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person
- DACA 24-year-old arrest for assaulting police officer – charges dropped, referred to ICE, put in detention and removal
- Do not get arrested!



It is unlawful for a person or other entity—to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien . . . with respect to such employment.

8 U.S.C. § 1324a(a)(1)

Who can work in the United States?



U.S. Citizens

- Born in U.S.
- Child of U.S. citizen
- Naturalized aliens



U.S. Nationals

- American Samoa
- Swain's Island



Permanent Residents

- "Green Card"
- Granted the right to live and work in the U.S. indefinitely



Aliens authorized to work

- In status with work authorization
- Possess an EAD
- Authorized by school



The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien[.]

8 U.S.C. § 1324a(b)(1)(A)

Form I-9 Process Overview

Offer Accepted - Employee accepts conditional offer for employment. The Form I-9 cannot be used as a screening tool to determine whether to hire someone.

Section 1 - Employee (only the employee or preparer aiding employee) completes Section 1 of the form no later than the first day of work for pay.

Section 2 - Employee gives documents and form to employer. Employer inspects documents and completes Section 2 of the form no later than the 3rd business day after employee starts work for pay.

Supplement - Complete supplements, if applicable. Supplement A needs to be completed when the employee uses a preparer and/or translator to complete Section 1. Supplement B needs to be completed when reverifying an employee's work authorization.



CREATE A CASE



1

The employer uses information from the employee's Form I-9 to create a case in **E-Verify**.

GET RESULTS



2

E-Verify displays an initial case result within a few seconds, though some cases may require additional action.

CLOSE THE CASE

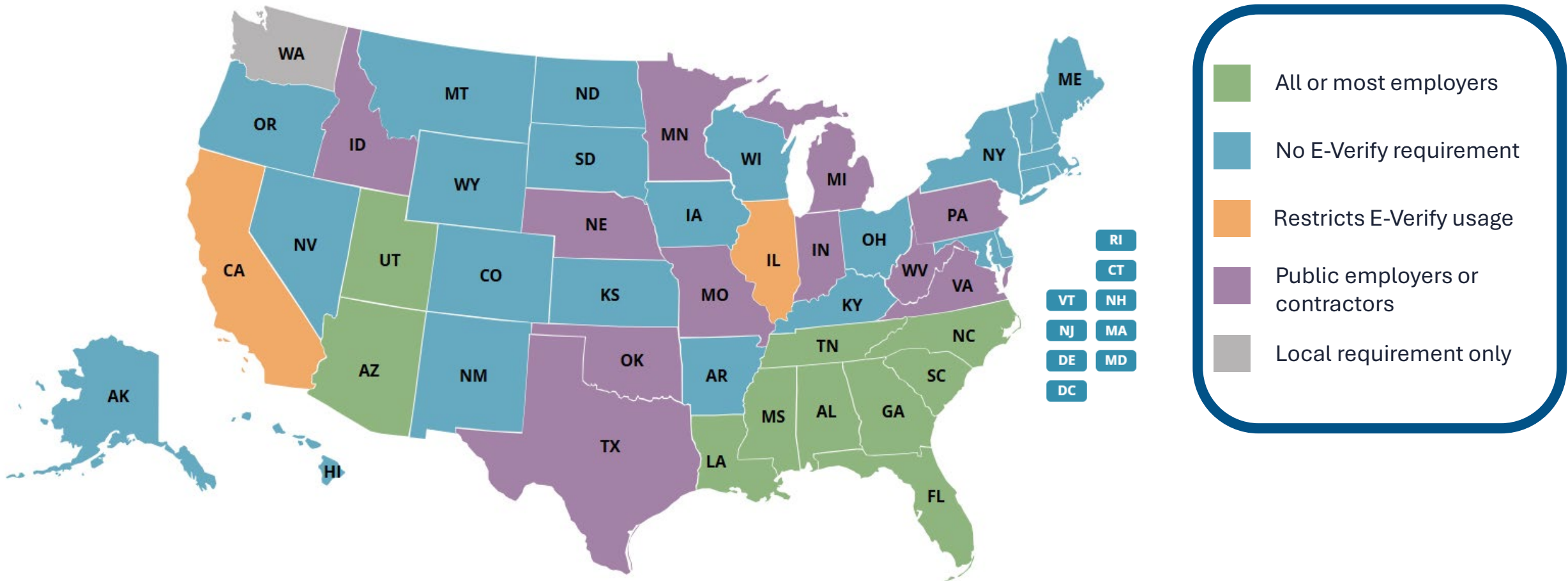


3

The employer closes the case once **E-Verify** displays a final case result.

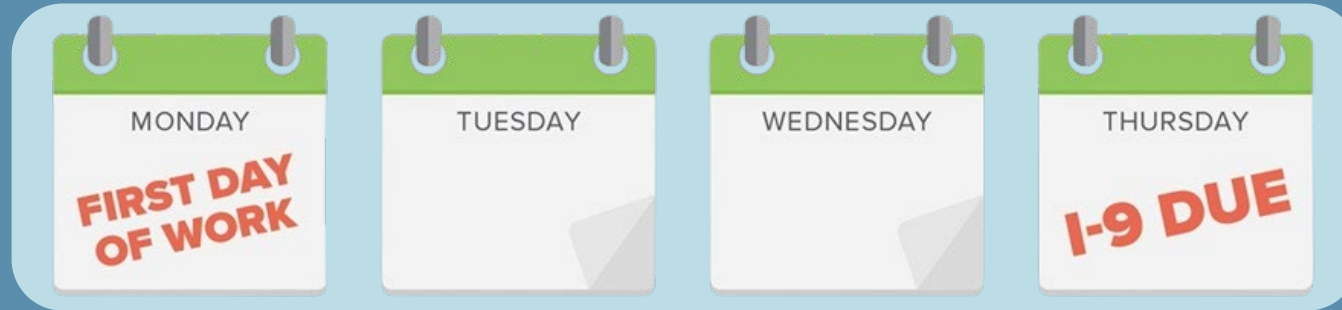


2024 E-Verify State Requirements*



**Disclaimer: E-Verify requirements at the state level can change frequently with new laws being introduced, amended, or repealed through legislative or executive actions. Cities and counties may also impose E-Verify requirements which are not widely disclosed. The information above is intended for informational purposes only and should not be relied upon as a definitive source.*

Compliance Tips



Watch the clock!

Form I-9 deadlines apply to all hires, whether local or remote. Failure to comply can result in a fine regardless of the excuse.



It can be useful to establish a dedicated day in the week when new employees join to ensure the timeliness of the procedure.



Compliance Tips



Documents that Establish Both Identity and Employment Authorization

or



Documents that Establish Identity

+



Documents that Establish Employment Authorization



Don't over document

Allow employees to choose the documents they wish to provide. Do not tell an employee which specific documents to present.



Acceptable I-9 documents are listed on page 2 of Form I-9. Refer new hires to that page.

Compliance Tips



Understand the documents


Make sure that the document is original, unexpired, appears to be reasonably genuine and that it relates to the employee.



You do not have to be a document expert. Consult USCIS website for guidance on documents you're not familiar with. Consider retaining copies.



Compliance Tips



Country or issuance: _____

Signature of Employee *Jacob Brown* Today's Date (mm/dd/yyyy) 01/24/2018

Preparer and/or Translator Certification (check one):
 I did not use a preparer or translator. A preparer(s) and/or translator(s) assisted the employee in completing
(Fields below must be completed and signed when preparers and/or translators assist an employee in completing this form.)
I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and



Sign on the dotted line

Unsigned or undated Forms are almost the equivalent of not completing one. Make sure all required fields are complete.



Consider providing staff with a checklist to complete as they review the Form for completion. Never backdate a Form.

Compliance Tips



Audit, audit, audit!

Offense is the best defense. Conducting semi-annual audits allows you to catch and fix errors before ICE comes knocking.



Don't audit your own work. Have those that did not complete the Form for the company conduct the review.



What is DACA and TPS?



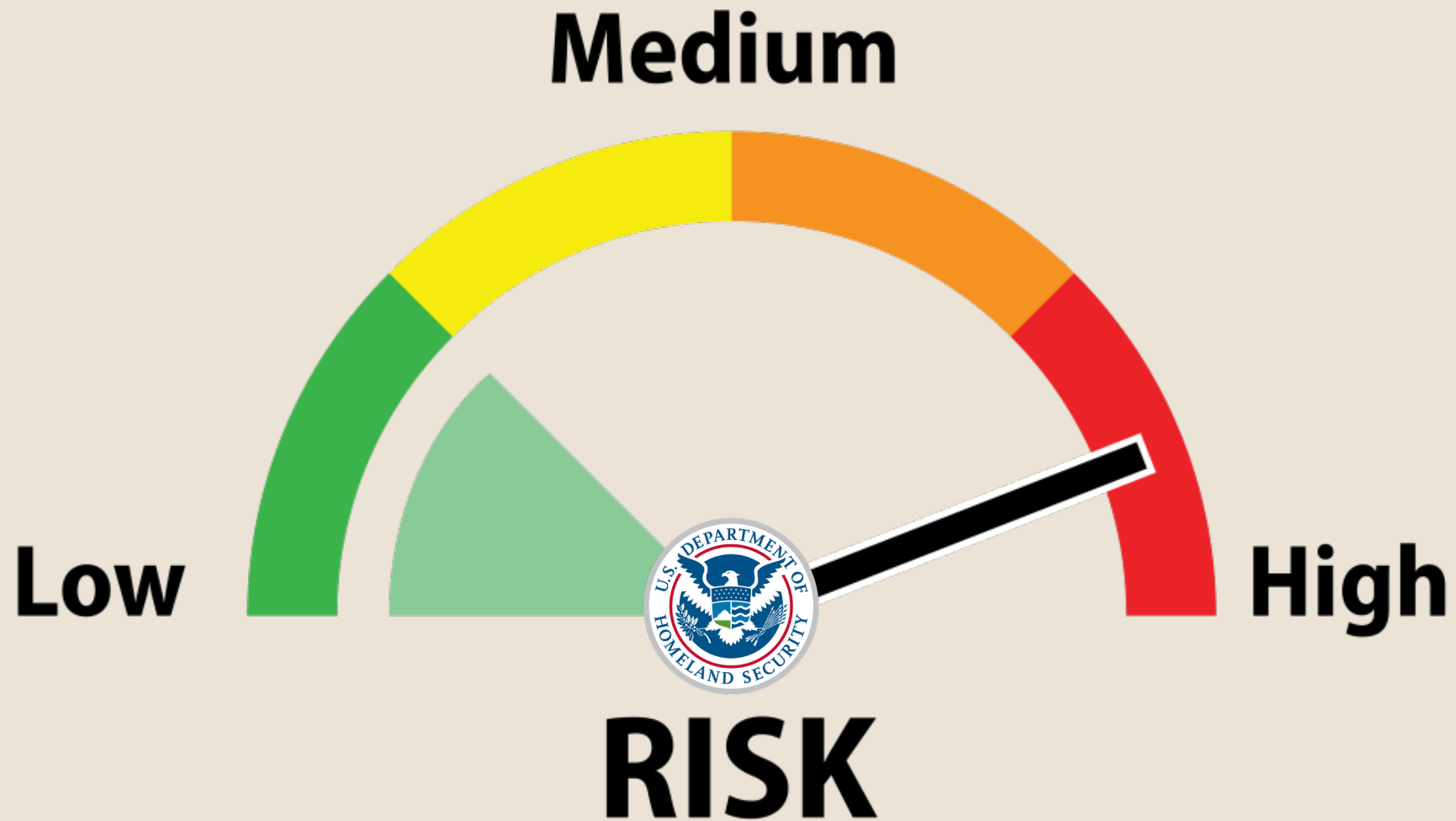
- **Deferred Action for Childhood Arrivals**
 - Established in 2012 by executive order
 - Grants some undocumented immigrants brought to the U.S. as children temporary relief from deportation
 - To apply, must have arrived in U.S. before age 16; lived in U.S. since June 15, 2007; be in high school, a high school graduate, or veteran; and have no felony convictions
 - *DACA recipients can get a work permit*
- **Temporary Protected Status**
 - Established by Congress in the Immigration Act of 1990
 - Temporary relief from deportation available to nationals of designated countries that are confronting an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions
 - *TPS recipients can get a work permit*

WEATHERING THE ICE STORM

- Launch of the largest deportation operation in U.S. history
- Using federal agents (ICE, CBP, DEA, US Marshalls, etc.)
- Section 287(g) state agreements to use local police
- Targeting undocumented criminals.
- Ended arrest restriction on “sensitive areas,” including houses of worship, schools, and hospitals
- Targeting employers with undocumented workers with civil fines- deportation of workers
- Threat of criminal prosecution if “knowingly” employing, harboring, shielding, or concealing unauthorized persons



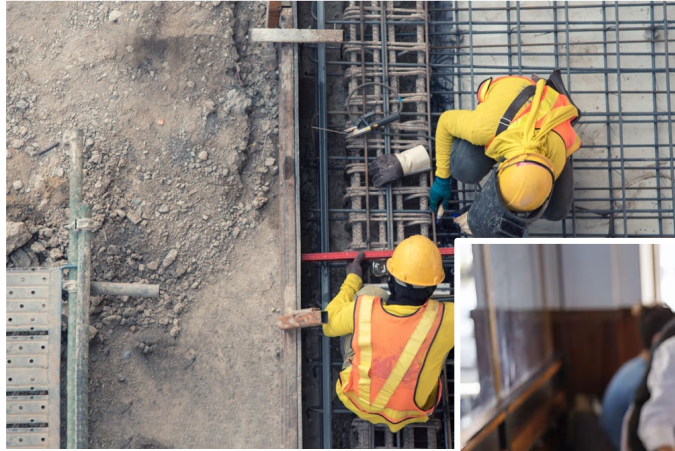
High Risk Industries



High Risk Industries



Construction



Agricultural

Manufacturing



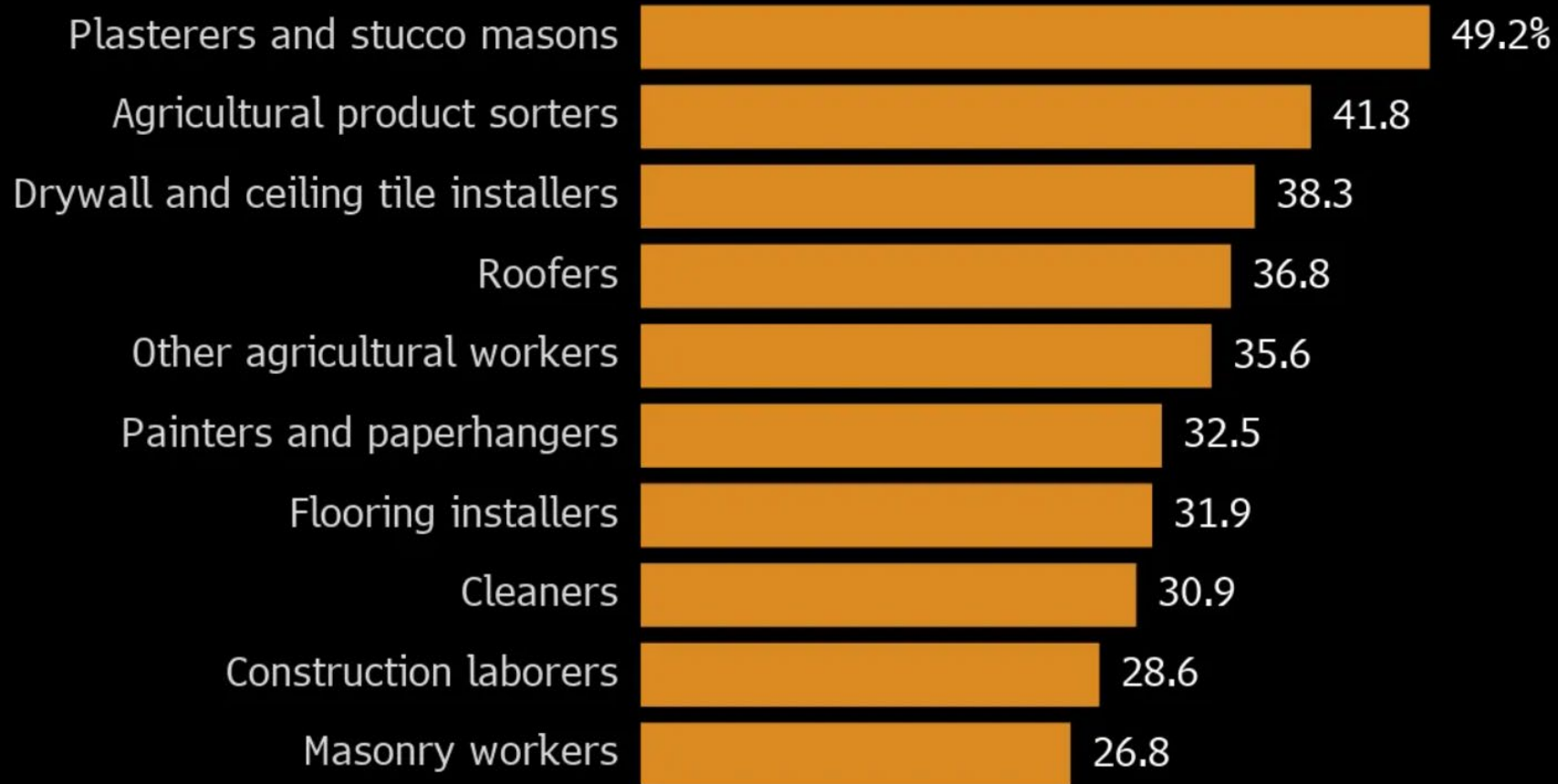
Hospitality



Food Processing

The Jobs Immigrants Hold

Occupations with the highest share of noncitizen US workers



Source: 2022 American Community Survey, compiled by IPUMS

Bloomberg


Other At-Risk Employers

Employers previously audited and issued a fine or warning notice



Employers issued a Notice of Inspection (NOI), but the case is unresolved

Office of Investigations
U.S. Department of Homeland Security
[Address]
[Address]



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

[Date]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for *Insert date and time*. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

Employer Checklist

1. Implement an immigration policy

- **Include an Immigration Policy as part of your handbook**
 - It should clearly state that
 - Company will only hire individuals with work authorization
- **Address Discrimination**
 - Include a provision prohibiting discrimination
- **Ensure Distribution**
 - Disseminate policy to all employees (can be done without reissuing handbook)
- **Zero tolerance**
 - Managers will be terminated if they knowingly hire unauthorized

Employer Checklist

2. Audit Form I-9s!!

- **Use a third party to audit**

Don't task the individual responsible for completing the Form I-9 for the Company with auditing their own work

- **Make edits in accordance with the M274 Employer Handbook**

Using contrasting ink and consider including a memo explaining the change

- **Do not backdate!**

Accurately date the change

Employer Checklist

3. Are we knowingly employing undocumented folks?

- **Do you have actual knowledge?**
 - Do you or any of your managers/supervisors have actual knowledge an undocumented employee is working for you?
- Has an employee admitted to being undocumented? How did the company respond?
- Has the Company previously been audited and informed of unauthorized employees? Did you terminate those employees? Did you rehire them under a different name?

Employer Checklist

4. Do we have constructive knowledge of any undocumented workers on payroll?

- **Do you have constructive knowledge?**
 - Constructive knowledge is usually found based on several pieces of information.
- Do not make presumptions based solely on an employee's national origin or race
- Social Security mismatch letter does not impute constructive knowledge
- Decide how you will respond to constructive knowledge issues (e.g., anonymous report that an employee is undocumented)

Employer Checklist

5. Do you have a Worksite Enforcement Protocol?

Worksite Enforcement Protocol

Clearly mark non-public areas

- Classify areas as “Private” or “Employees Only”.
- Prepare a master list (map).
- Without a valid judicial warrant granting access to non-public areas, agents cannot enter those areas.



Worksite Enforcement Protocol

Identify Point of Contacts(s)

- Identify potential Initial Point of Contact (i.e., receptionist).
- Initial Point(s) of Contact should know who to contact and how to respond.
- Get copy of document, take a picture, immediately send to Primary Point of Contact. Ask if agents can wait until Primary Point of Contact arrives. Know what to do if agents refuse to wait.



Worksite Enforcement Protocol

Identify Point of Contact(s)

- Primary contact should be a senior-level manager or human resources member.
- Contact counsel.
- Primary Contact takes charge– Do not consent beyond what is in judicial warrant.
- Follow agents to ensure don't exceed warrant.
- **Train Points of Contact**



UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No.
)
)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the District of
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before (not to exceed 14 days)
in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to (United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
for days (not to exceed 30) until, the facts justifying, the later specific date of

Date and time issued: Judge's signature

City and state: Printed name and title

- Recognize what a Judicial Warrant is –
• Issued by a court
• Signed by a judge

Recognize what an Administrative Warrant is –

- Homeland Security Document
- NOT issued by a court
- NOT signed by a judge

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Worksite Enforcement Protocol

Educate employees

- Consider providing Red Cards to all employees educating them on their rights.
- Consider providing additional materials to workers and their families.

Provide Step-by-Step instructions

- Give specific examples:
 - No warrant, but agent wants to speak with employee.
 - Agent has administrative warrant and wants to search.
- Decide on company's level of cooperation.
- Do not interfere with agents.
- Take notes.

You have constitutional rights:

- **DO NOT OPEN THE DOOR** if an immigration agent is knocking. If you are inside of your house, show the card through the window or slide it under the door.
- **DO NOT ANSWER ANY QUESTIONS** from an immigration agent if they try to talk to you. You have the right to remain silent.
- **DO NOT SIGN ANYTHING** without first speaking to a lawyer. You have the right to speak with a lawyer.
- If you are outside of your house, **SHOW THIS CARD TO THE AGENT**. Ask the agent if you are free to leave and if they say you can, leave calmly.



www.RedCardOrders.com

Worksite Enforcement Protocol

Understand post-visit actions

- Notify employees that agents have left.
- Ensure all employees are accounted for.
- If some employees are taken into custody, notify next of kin.
- Compile notes.
- Identify any seized items.
- Discuss results with your attorney.



Continuing Investigation

- Agencies will review items seized during the raid
- May conduct undercover surveillance post raid
- May try to get employees who are in custody to provide information about your hiring practices
- May use potential criminal charges against supervisors, etc. to provide information about your hiring practices.



Take-Aways

- ***Understand your obligations under immigration law.*** If you're unsure, consult counsel.
- ***Monitor updates.*** Things change in the immigration space quickly.
- ***Draft comprehensive policies.*** Review them periodically and conduct training.
- ***Audit before you're audited!*** Are your Forms I-9 in good shape? Do you participate in E-Verify?
- ***Are you in compliance concerning those employees on a visa?***
- ***Plan for workplace audits.*** Can you access Forms I-9 in 3 days?
- ***Do you have a worksite protocols in place?***

Thank you!

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