



Caught in the Crossfire: Recent Immigration Raids Expose Legal Risks in Subcontractor Labor

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Federal agents at the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) have been busy in recent months, conducting enforcement operations at factories, farms, and construction sites across the country. The follow-on investigations from these raids have allegedly revealed extensive immigration violations, including unauthorized employment by individuals who had crossed the border illegally, overstayed visas, or entered the U.S. under visa waiver programs that prohibit employment.

Notably, many of the individuals detained were not direct employees of the company where the raid occurred, but rather subcontractors hired to support the company's projects and operations. This distinction underlines the growing scrutiny of third-party labor arrangements by ICE officials. In the current climate, a company's subcontractor practices can expose it to costly federal enforcement actions, emphasizing the need for robust compliance protocols and subcontractor oversight.

End-User Liability in Immigration Compliance

In large-scale industrial or construction projects, companies often rely on layers of subcontractors to provide specialized labor, equipment installation, or IT services. However, small and mid-size companies across various business sectors also rely on third parties for staffing needs. These third-party subcontractors may hire foreign nationals—sometimes without valid work authorization due to poor or non-existent I-9 protocols. The primary company, often referred to by ICE or U.S. Citizenship and Immigration Service (USCIS) as the “end user,” may not directly employ these individuals but still benefits from their labor through the subcontract agreement. This employment structure creates a legal gray area. If the subcontractor fails to verify work authorization or knowingly

employs undocumented workers, the end user can be held liable for immigration violations.

It is not uncommon for third-party staffing companies, particularly those providing IT solutions, to employ foreign nationals under the H-1B or L-1B visa programs. End users, particularly those who receive the benefit of foreign national labor through third-party staffing agencies, can become entangled in immigration investigations despite not being the official visa sponsors. This typically begins when a third-party staffing agency, which recruits, employs, and places the workers, files an H-1B or L-1B petition and identifies the client company as the “end user” in the supporting evidence. In such cases, the company’s name and worksite details are included in government records, effectively linking them to the foreign national’s employment arrangement.

Often, this connection is established through routine documentation, such as a verification letter confirming the worker’s assignment to a specific project. While seemingly harmless, such letters can become the basis for targeted investigations by DHS, particularly through its Fraud Detection and National Security (FDNS) unit. Once flagged, the company may be subject to unannounced site visits, document reviews, and interviews conducted by ICE, placing the business under a compliance microscope and potentially disrupting operations. This was evident earlier this month in one of the largest single-site immigration enforcement actions, where subcontractors were found to have employed unauthorized workers, leading to significant legal exposure for end-user clients.

The implications of such investigations are far-reaching. Companies may face reputational damage, operational disruption, and potential legal liability—even if they have not directly sponsored the foreign national’s visa. The mere presence of a foreign worker on-site, coupled with documentation connecting the company to the worker’s assignment, can trigger a comprehensive review of the company’s immigration compliance practices. In some cases, ICE may expand its inquiry to include other foreign nationals working at the site, leading to broader scrutiny and increased risk exposure. These investigations underscore the importance of understanding

how even indirect involvement in visa sponsorship can carry significant compliance risks.

Legal Penalties

This growing enforcement trend illustrates how subcontractor missteps can escalate into full-scale investigations, even when the primary company is not the direct employer. The employees may face detention and removal, but the company and its executives may also face harsh consequences.

If a company is charged with immigration-related fraud, for example, legal exposure may include substantial monetary fines, reputational damage, and criminal prosecution under several federal statutes. Common charges include visa fraud and conspiracy under 18 U.S.C. §§ 371 and 1546(a), false statements under 18 U.S.C. § 1001, and mail or wire fraud under 18 U.S.C. §§ 1341 and 1343. These statutes carry significant penalties, including imprisonment, forfeiture of assets, and long-term restrictions on business operations involving federal contracts or immigration sponsorship.

In addition to criminal liability, companies may face civil enforcement actions, including debarment from federal programs, increased scrutiny in future immigration filings, and mandatory compliance audits. Even if a company is not the direct sponsor of a foreign national's visa, any involvement, such as issuing verification letters or hosting foreign workers, can be construed as material participation in a fraudulent scheme.

Given the gravity of these risks, companies should treat their own immigration compliance, as well as that of their third-party subcontractors, as a core component of their risk management strategy. Some best practices are outlined below.

1. Recommended Subcontractor Contract Terms

To mitigate risk, contracts with subcontractors or staffing agencies supplying foreign workers should include:

- **Compliance representations:** Subcontractor must certify compliance with all immigration laws and confirm valid work

authorization.

- **Notification obligations:** Subcontractor must notify the company of any changes in visa status or government inquiries.
- **Access and cooperation clauses:** Subcontractor agrees to cooperate with investigations and provide documentation.
- **Indemnification:** Subcontractor indemnifies the company against liabilities from immigration violations.
- **Termination rights:** Company may terminate the agreement for non-compliance.
- **Audit rights:** Company reserves the right to audit subcontractor records, including hiring practices and I-9 policies.
- **Compliance awareness:** Subcontractors and independent contractors must understand the legal risks associated with undocumented status and the company's policies against knowingly employing unauthorized workers.

2. Recommended Internal Controls

To reduce risk, companies should implement the following internal protocols:

- **Subcontractor identification:** Maintain a centralized registry of all subcontractors who assign foreign national staff to your worksites.
- **Compliance audit:** Conduct a thorough review of all third-party labor contracts to ensure they contain robust immigration compliance provisions.
- **Letter authorization:** Limit who can sign verification letters and define approval procedures. Although these letters may seem routine, they can be used as evidence in investigations to establish a direct link between the company and the foreign worker.
- **Signatory guidelines:** Train authorized signers on legal risks and red flags associated with third-party contractor verification letters.

- **Manager oversight:** Monitor relationships between internal managers and subcontractor representatives.
- **Reporting mechanism:** Create a channel to report misuse of verification letters.
- **Investigation protocols:** Establish a response plan for FDNS site visits or inquiries.
- **Internal audits:** Periodically review subcontractor records, letters issued, and visa tracking.

Key Takeaways

Lessons from recent ICE and DHS enforcement actions show that even indirect relationships with foreign workers through subcontractors or staffing agencies can trigger regulatory scrutiny. In today's enforcement landscape, companies must recognize that indirect involvement in immigration sponsorship does not shield them from federal oversight. The use of third-party staffing agencies and subcontractors to source foreign talent requires careful attention to documentation, contract terms, and internal compliance protocols.

Employers should consult legal counsel before issuing verification letters and ensure that subcontractor agreements include immigration compliance clauses. By managing these relationships and understanding the risks associated with being designated as an end user, companies can better protect themselves from the disruptive and costly consequences of DHS and ICE investigations. If you have questions about best practices for third-party staffing contracts, contact the authors or any attorney with Frost Brown Todd's [immigration team](#).

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