Dec 03, 2025

Categories:

Immigration & ICE Operations
Publications

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Guide to Preventing Staffing Agency Form I-9 Violations

Many staffing agencies have Form I-9 compliance issues, which could create liability and chaos for your business.

Many businesses incorrectly believe that outsourcing staffing to a third-party agency also outsources the risk and liability for negligent or intentional violations of U.S. immigration law. In 2020, five executives of a concrete manufacturer were charged with felonies after being accused of colluding with a staffing company to process illegal workers for their projects. Several executives faced up to three years in prison, while the company was required to forfeit $3 million to the U.S. Treasury. Under today's immigration policies, a business can absolutely be held criminally and civilly liable for their third-party agencies' violations of the law. **For your business to survive, you must know how to protect your business from liability created by third parties.**

How To Protect Your Company?

1. Draft Staffing Contracts to Establish Concrete Compliance Obligations

Businesses should have legal counsel carefully review contracts with third-party staffing agencies to ensure that the agencies commit to honoring detailed compliance obligations, have thought-out response plans to any Form I-9 or U.S. Immigration and Customs Enforcement (ICE) actions, and operate with as much transparency as possible. Ensuring that these contracts are detailed and create tangible expectations for compliance with the law will likely help insulate your business from liability or accusations of wrongdoing.

2. Communicate With Staffing Agency to Ensure Preparation for Potential ICE Inspection

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In today's environment, all third-party staffing agencies should have an emergency preparedness handbook and protocols for what to do should an ICE inspection occur. Staffing agencies should have designated contact personnel trained to interact with ICE officers. These personnel should be prepared to guide the company through an inspection with an emphasis on protecting the agency and customers' interests. Businesses should communicate with staffing agencies about what protocols are in place before contracting with them.

3. Try to Verify Compliance Indirectly

Even though staffing agencies cannot provide copies of their employees' I-9 documentation, some are willing to have responsible officers provide periodic attestations in writing that confirm the staffing agencies' compliance with federal law. These attestations should state that each employee has a complete Form I-9 on file, has a valid work authorization, and is scheduled for reverification prior to the expiration of the employee's work authorization. If the staffing agency is willing to provide an attestation, this document would likely contribute to insulating your business from liability arising from any violations committed by the third-party staffing agency.

4. When in Doubt, Seek Help to Prevent the Worst-Case Scenario

Experienced legal professionals can help advise your business on the best practices to protect what you have worked so hard to build. Frost Brown Todd's team of immigration and business law attorneys can help your business navigate third-party staffing transactions while reducing risks and maximizing your peace of mind. Don't hesitate to reach out to the authors of this article if you have questions or need assistance.

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