

Worksite Visit Q&A for Employers

Q: What is the purpose of this Q&A?

A: This Q&A provides guidance for employers to prepare for potential worksite visits by federal agencies such as Fraud Detection and National Security (FDNS), Department of Labor (DOL), Immigration and Customs Enforcement (ICE), or Homeland Security Investigations (HSI).

Q: What are the reasons for worksite visits?

A: The government could visit a worksite for different reasons, such as random selection through FDNS audits, complaints or tips, extensions or changes of status requests, and/or employer obligations.

Q: What are the main objectives of worksite visits?

A: The main objectives are to verify:

- The accuracy of information in visa petitions (e.g., Forms I-129 for H-1B, L-1).
 - In general, the investigator will seek information relating to the petitioning employer, the relationship between the petitioner and beneficiary, whether the beneficiary is or will be employed in the capacity described and at the location(s) specified, and whether the beneficiary has the requisite experience/qualifications.
- Compliance with conditions (e.g., job duties, work sites, salaries) in labor condition applications (LCAs) and visa petitions.
- Proper maintenance of I-9 and employment records.
- Compliance with STEM OPT training plans (i.e., Forms I-983).

Q: Should we do anything specific to prepare for worksite visits if we have employees working pursuant to STEM OPT?

A: You should ensure STEM OPT training plans align with job roles, and prepare managers to answer role-related questions. Managers, supervisors, and third-party worksite clients/customers should be prepared to answer questions on the following:

- Information in the STEM OPT training plan.
- Nature of the trainee's role in the organization.
- How the role relates to the trainee's degree, academic program, and qualifications.
- Qualifications managers look for when hiring for similar positions.
- Nature of the manager's supervision and training.
- Whether the trainee is placed at a third-party worksite.

Q: How should we prepare for potential worksite visits?

A: As best practice, you should:

- **Designate Points of Contact.** Assign a primary representative and an alternate and train them on compliance and interaction protocols. Alert reception staff and key personnel about potential visits and ensure they understand escalation procedures.
- **Know Your Workforce.** Understand your employee makeup and their immigration statuses.
- **Organize Documents.** Keep organized and accessible records, including corporate documentation, visa petitions, STEM OPT training plans, LCAs, payroll records, and I-9 records.
- **Ensure Employee Awareness.** Inform employees of potential visits and their rights. Employees should confirm job title, duties, and salary, refer investigators to the designated representative, and avoid extraneous information.
- **Reinforce Facility Readiness.** Ensure compliance with OSHA standards and display required notices.

Q: What should we do if a federal agent arrives at our workplace?

A: Remain professional and calm, as federal agents are trained to gather information, sometimes using persuasion or intimidation. Inform the agent of your workplace's protocol for handling law enforcement requests and direct them to a designated point of contact. The designated contact should ask for the agent's identification and business card and guide them to a private office or room away from public areas. This does not grant the agent consent to access the facility but allows for a private discussion about their purpose and whether they have any legal documents.

Q: What legal documents should we ask the agent for?

A: You should ask the government official or officer if they have a subpoena or warrant.

Q: How do subpoenas and warrants differ from each other?

A: Subpoenas are generally used to obtain records or information or to compel someone to appear in court on a future date. Warrants are generally used to obtain immediate access to premises and people, usually for activities like arrests, searches, and seizures.

Q: Who signs subpoenas and warrants?

A: Both types of court orders can either be signed by a government official (administrative subpoena or warrant) or a judge or magistrate (judicial subpoena or warrant).

Q: What impact does the signatory have?

A: An administrative subpoena or warrant does not require compliance. A judicial subpoena or warrant requires compliance. However, you have the right to challenge a judicial subpoena in court rather than comply with it.

Q: How long do we have to comply with a subpoena?

A: It is unlikely that the agent would have the right to demand immediate compliance. Subpoenas usually direct the recipient to do something by a certain date in the future. You can tell the agent that the employer will respond by the deadline (note that “respond” might mean challenging the subpoena in court, not necessarily complying with it).

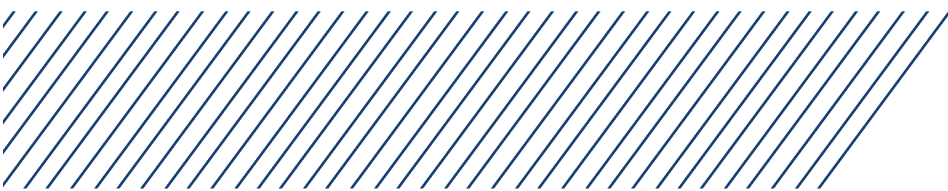
Q: What should we do during the worksite visit?

A: After verifying inspector credentials and noting their name, title, agency, and contact information, you should:

- Ask for a subpoena or warrant. If you need time or a different person to review documentation, ask the agent to remain in a public area. Without a judicial subpoena or warrant, compliance is not required.
- Politely request rescheduling if the designated contact is unavailable.
- Contact legal counsel.
- Meet with the investigator in a conference room rather than in an open area or your office.
- Take detailed notes about the investigator’s questions and your responses.
- Do not allow the investigator to wander through the premises. Insist on accompanying the investigator at all times and ensure they specify what they want to see.
- Take detailed notes about every location visited, questions asked, and records reviewed.
- Be present for all conversations between the investigator and any employee and document these discussions in detail.
- Ask the investigator to specify requested records. Avoid handing over files that may contain private or irrelevant information.
- Do not allow the investigator to remove documents. Offer to photocopy necessary items and forward them to the investigator’s office later.

Q: What should we do after the worksite visit?

A: Record as much information as you can about the visit, such as number of agents, how they dressed, what they said to employees, and other behavior. As best practice, you should also debrief with the internal team and legal counsel, address any follow-up requests promptly, and implement corrective actions to address identified issues.



Q: What should we do if agents try to detain a specific worker?

A: Agents may come to your business to try to find a particular person (or people). While they are there, they may try to question, detain, and even arrest other people. The best way for workers to protect their rights is to stay silent and ask to contact an attorney. Workers do not have to hand over any IDs or papers to government officials. All workers have this right.

Q: How is a worksite visit different from an ICE raid?

A: An ICE raid occurs when agents from Immigration and Customs Enforcement, along with other federal and state officials, unexpectedly arrive at an employer’s location. These agents may surround the area, potentially with support from helicopters or airplanes. They enter the premises armed with a federal criminal search warrant, which specifically outlines what areas will be searched and what items may be confiscated. If they only have an administrative warrant, you do not need to assist them in identifying or locating the specific individual they are seeking.

Q: Will agencies ever contact employees directly?

A: In addition to employer worksite visits from various government agencies, DOL contacts H-1B employees directly through email questionnaires requesting details about their employment and the employer’s compliance with the LCA.

Q: Are there penalties for noncompliance?

A: Penalties for noncompliance include fines, visa revocations, and debarment from government contracts.

Please [contact](#) Garfinkel Immigration Law Firm for further guidance or assistance with worksite visits.

This Q&A is intended for informational purposes only and does not constitute legal advice.