

# Brace for Impact: Election Consequences for U.S. Employers

What to know about – and expect from – the incoming administration.

The incoming Trump administration is expected to bring significant changes to the regulatory and enforcement landscape, effecting employers across every industry.



It is widely known that this administration intends to focus on immigration laws, tax policy, and labor regulations. Some of these changes will be made through proactive regulation (or deregulation) and may benefit employers. Others will be enacted through reactive compliance enforcement.

While all employers will be impacted by these changes, those who rely on foreign nationals with temporary work authorization will be disproportionately impacted given the focus on immigration compliance and worksite enforcement exhibited by the incoming administration.

This white paper briefly reviews:

- The impact the first Trump administration (Trump I) had on such employers;
- Anticipated changes under a second Trump administration (Trump II); and
- Steps employers can take *now* to mitigate compliance concerns before the new administration takes office.

## Looking Back to Move Forward: Lessons from Trump I

The first Trump administration created policies targeting noncitizens such as family separation at the border, arrests of noncitizens encountered in the interior, and termination of programs such as Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA). Employers may remember such policies as:

### Heightened Form I-9 and E-Verify Audits

Trump I implemented an exponential [surge](#) in Form I-9 audits, increasing by more than 257% in just the first 24 months of the administration.

### Increased Worksite Enforcement

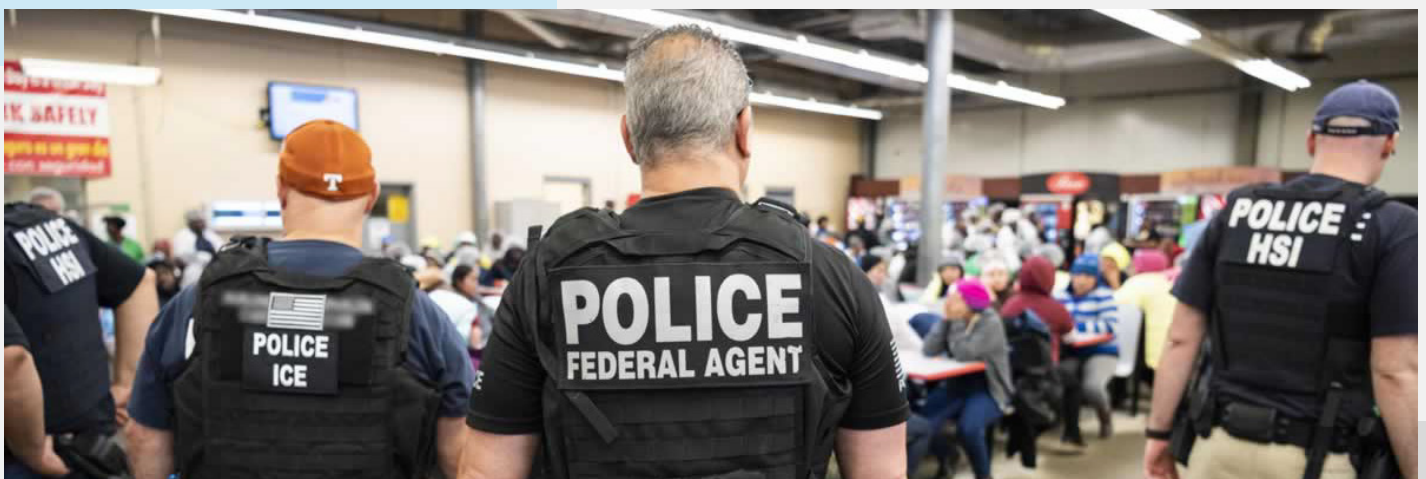
While the vast majority of Form I-9 audits conducted during Trump I did not result in a worksite enforcement action, some did, such as [this](#) one in Mississippi that resulted in 680 employees being administratively detained.

### “Buy American and Hire American” Policies

This [package](#) made it more difficult for employers to hire foreign nationals and restricted the ability for the executive branch to award contracts or monies to foreign companies.

### Mandatory E-Verify Proposals

Strong pushes were made during Trump I to implement a universal E-Verify mandate such as [G-Verify](#) and incentivizing participation in the [IMAGE](#) program.



## The Here and Now: What to Expect During Trump II

As additional appointments are made, the future becomes clearer, and opportunities and challenges begin to emerge. All employers, particularly those who have foreign nationals on their payroll, will be impacted by changes such as:

### A RETURN TO AGGRESSIVE AND DISRUPTIVE WORKSITE ENFORCEMENT

- An exponential increase in Form I-9 and E-Verify audits by Immigration and Customs Enforcement (ICE), each requiring a response within 72 hours.
- More criminal cases stemming from Form I-9 audits resulting in arrests, criminal charges, and workplace disruption.
- Increased scrutiny of employers who “prefer” noncitizen employees over United States citizen employees, which has previously resulted in enormous settlements against [Apple](#) and [Facebook](#) by the Department of Justice’s Immigrant and Employee Rights Section.
- Additional – and more intrusive – site visits by Fraud Detection and National Security Directorate (FDNS) to verify the veracity of the information contained in nonimmigrant petitions, including *visits to the home of those employees designated as work from home*.

### DIFFICULTY OBTAINING WORK AUTHORIZATION DOCUMENTS

- Fewer noncitizens will be eligible for work authorization documents with the anticipated termination of the TPS, DACA, and certain parole programs.
- Increased adjudication times due to:
  - the administration’s border policies which will require a surge of available immigration service officers to the southern U.S. border;
  - an increase in applications for employment authorization documents filed by noncitizens detained – and then released – under a “mass deportation” operation; and
  - a decrease in the validity period of employment authorization documents resulting in more frequent renewal applications.
- The sunset of the 540-day EAD extension period in October of 2025.



### RESTRICTING SOURCES OF IMMIGRANT LABOR

All indications are that Trump II will be strictly enforcing restrictions on immigrant labor. This will manifest itself through multiple policies, including:

- Increased scrutiny of job qualifications and wage levels for H-1B employees, which will result in a higher denial rate.
- Increased Requests for Evidence, prolonging the visa petition and renewal process and resulting in additional denials.
- Restricting Optional Practical Training (OPT) work authorization, including possible removal of the 24-month STEM-OPT extension.
- No longer deferring to previously approved petitions when filed by the same employer for the same role, lengthening processing times.
- A return to “Buy American Hire American” policies.

## Adopting to the New Normal: A Roadmap for Successful Risk Mitigation

In light of these anticipated shifts, employers are encouraged to take the following proactive steps:

### 1 Understand your company's risk profile.

Determine whether your company is likely to be targeted. It is anticipated that Trump II will target:

- Industries with a high chance of unauthorized employment
- Prior violators
- Organizations with large numbers of petitions filed for suspect positions
- Organizations with large numbers of noncitizens from suspect or adversarial countries (Iran, Russia, etc.)
- Critical infrastructure companies or companies that serve them (i.e., janitorial services)
- Organizations impacted by BAHA
- Entities operating in the gig economy

Entities that possess multiple attributes from the list above may be subject to heightened scrutiny by way of increased Form I-9 audits, site visits by FDNS, and/or DOJ-IER investigations.

### 2 Conduct internal audits.

- Review Forms I-9 and accompanying documents for accuracy and timeliness. This includes any documents associated with Section 2 or Supplement B reverifications. These audits should be performed to identify if any documents seem suspicious (i.e., not legitimate, not related to the subject).
- Analyze E-Verify accounts and close out any open cases as applicable. It is important to note that these audits must be conducted without consideration of citizenship, immigration status, or national origin.
- Assess current Form I-9 and E-Verify processes as well as job postings to ensure that all workflows are void of discrimination. This is crucial because ICE, DOJ-IER, and USCIS all possess information sharing agreements. As such, DOJ-IER and ICE use shared information to generate leads for audits and enforcement actions.
- Remediate any existing Social Security Administration no-match issues.

### 3 Prepare for workplace disruption.

The best way to prepare for potential workplace disruption is to determine which employees are working on temporary work authorizations and understanding which roles they fill. Of those on temporary work authorization, determine the underlying basis for the work authorization and track changes related to that type of work authorization. Questions to ask and answer internally may include:

- Is the individual an H-1B employee?
- Is the individual a TPS beneficiary?
- Is the individual a DACA beneficiary?

For example, if someone presented an EAD with a category code of A12 or C19, understand that TPS may be terminated and the employee may lose work authorization. Another example - if your employee is an H-1B visa holder, understand that the renewal may not be approved as readily as it would have been under the Biden administration.

The ultimate goal of this exercise is to identify which employees are susceptible to work authorization losses/gaps and to begin drafting workforce continuity plans to backfill those roles.

The “ripple effects” of fear and anxiety Trump II proposed policies have had among noncitizens and their families (particularly “blended” families in which some may have legal status and some may not) should be taken very seriously and not underestimated by employers. An enforcement wave (such as street arrests of noncitizens or a large worksite enforcement operation akin to the Mississippi action referenced above) may trigger some employees to resign and leave the area.



## 4 Review and update applicable policies.

Once current processes have been properly evaluated, companies need to begin revisions as needed. Particular attention should be paid to ensuring policies adequately:

- Document Form I-9 completion and document review processes;
- Handle gaps in employment authorization; and
- Outline (in detail) hiring practices (including job posting language).

Organizations should establish not only the policy, but parameters for exceptions to the policy and how those exceptions will be documented.

Companies should also evaluate the state of their E-Verify participation. E-Verify will be subject to many changes in 2025. This may include rule and/or legislative changes resulting in E-Verify becoming mandatory nationwide.

Of utmost emphasis - a policy is only as good as its implementation. Each policy update should be accompanied by extensive, routine, and continuing education and training for staff. Employers are strongly encouraged to thoroughly and appropriately train all employees involved in hiring and HR processes on USCIS's rules, applying company policies, and anti-discrimination tactics.

## 5 Formalize and implement an action plan.

Every person in your organization should understand what to do when ICE, or another entity, knocks on the door. This includes:

- Establishing an official representative;
- Documenting the official representative's reporting chain; and
- Training front line staff most likely to first encounter officers.

Companies should also establish a separate workflow for receiving and responding to ICE and DOJ-IER audits and subpoenas. Such workflows should consider who from the organization takes the lead in organizing audit responses and who will work directly with counsel (both inside and outside). If the point person is not from the organization's internal/external legal teams, workflows need to outline the point at which legal representation is informed of the audit/ investigation and who is responsible for this delivering this notification.

Of particular importance is the role of the Form I-9 and E-Verify vendor in formulating audit responses. At the outset, determine what level of audit and/or document production support your vendor may offer or *you may need*.



During an ICE audit, organizations only have three days to produce all Forms I-9 and related documents for all employees. Vendors can make meeting this deadline exceedingly easy or difficult. It is critical to understand exactly how your vendor will support you in these instances *prior* to an audit. Asking questions and securing detailed documentation regarding support strategies is proactive way to be best prepared for a potential audit.

## 6 Enhance communication with employees

As discussed above, foreign national employees are likely anxious over their immigration status (or the status of a relative) in the U.S. Companies should consider hosting informational sessions or communicating directly with foreign nationals about their status if changes are made to immigration policies.

## 7 Monitor legal developments

Use resources available to you, [including those available from i9Success](#), to keep tabs on enforcement trends and regulatory changes.

## Conclusion

Each new administration brings with it different plans and priorities that organizations must prepare for and Trump II is no different. However, the administration has been extremely transparent about their upcoming focus, affording employers the time to prepare – well before ICE knocks on the door. ■



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