

# GUIDING THROUGH CHANGE

Understanding Policy Shifts in the Trump Administration



UNDERSTANDING  
POLICY SHIFTS  
IN THE TRUMP  
ADMINISTRATION

K&L GATES

Business Visitors or Unauthorized Workers?

## Understanding ESTA & B-1 Boundaries

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UNDERSTANDING  
POLICY SHIFTS  
IN THE TRUMP  
ADMINISTRATION

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# Contents

- 1 Enforcement Landscape
  - 2 The Importance of Immigration Compliance
  - 3 Business Visitors
  - 4 Contractors
  - 5 Potential Liabilities
  - 6 Recommendations
  - 7 Questions
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# New Enforcement Landscape

# New & Aggressive Enforcement Landscape

- Ideological Commitment: “[W]orksite enforcement operations are going to massively expand.”
  - “Border Czar” Tom Homan, WH Exec. Assoc. Dir. Of ERO (June 12, 2025)
- Scope: “Look everywhere.”
  - President Donald Trump on meeting a daily quota for arresting 3,000 unauthorized persons (June 17, 2025)
- Resourcing & Duration: One Big Beautiful Bill Act (“OBBB”) – 10,000+ new ICE agents over next four years



# Be Prepared for Worksite Enforcement

- Develop and maintain internal worksite enforcement protocols now:
  - Designating worksite coordinators
  - Recordkeeping procedures
  - Understanding scope and nature of enforcement operations
  - Understanding employees' rights
- Ensure appropriate training and preparation in the event of worksite enforcement:
  - Cooperate, but verify
  - Documenting scope, activity, and seizure
- Develop an action plan for post-enforcement response

# Importance of Immigration Compliance



# Overview: Importance of Immigration Compliance

- Growing and aggressive enforcement focus on employers
- Two common pressure points:
  - Business visitors (B-1/ESTA)
  - Contractors and misclassification
- Compliance protects both employers and employees
- Compliance now helps mitigate fallout from potential enforcement actions in the future



# Potential Liabilities



# Serious Legal & Reputational Harms

- Civil Exposure
  - Unlawful to knowingly hire or refer unauthorized workers
  - \$3,000 fine per unauthorized worker (pattern & practice violations (8 USC §1324a(a)(1); 8 CFR § 270.3(b))
- Criminal Exposure
  - Unlawful to knowingly employ, recruit, or facilitate employment of unauthorized workers
  - Corporate felony liability; criminal forfeiture; max. six months' prison; fines
  - Potential RICO exposure for “bringing in,” “harboring,” “transporting,” or “encouraging or inducing” illegal workers if done for “financial gain” (8 USC § 1324)
  - Example: >\$95MM in criminal and civil fines in recent corporate resolution
- Reputational & Business Impacts

# Business Visitors

# Overview

- B-1 vs ESTA: similar, but not the same
- Entries seem simple
  - Quick ways to get employees into the U.S. for short-term business needs
  - Most common areas of risk
- NIV category ICE and CBP are watching closely
  - Common misuse. Out of scope activities can create exposure
- Key challenges:
  - Limited scope of activities
  - Short duration
  - Runway and administrative burden of obtaining work visa
  - Scrutiny: POE / Interview / Presence during workplace visits

INA 101(a)(15)(B):



*An alien ... having a residence in a foreign country which he or she has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure*



# Who is a Business Visitor?

## Elements:

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Foreign national

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Entering the U.S. temporarily

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Legitimate business activities that do not involve U.S. employment or productive labor

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Has a foreign residence with no intention of abandoning it

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Compensated from non-U.S. source

# Business ≠ Work

## Permitted activities:

- Attending meetings or conferences.
- Negotiating contracts.
- Receiving training or participating in short-term planning.
- Touring facilities or visiting sites.

## Prohibited activities:

- Hands-on project work.
- Supervising U.S. employees.
- Delivering services to a U.S. client.
- Being paid from a U.S. payroll (beyond incidental expenses).

## Example:

### Project Manager

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A multinational tech company sent project managers to the U.S. on ESTA for quarterly business reviews.

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Manager starts running weekly project meetings and assigning tasks.

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Issue: Hands-on work. Unauthorized employment



9 FAM 402.2-5(E)(1):



*An applicant coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services.*



# Commercial or Industrial Worker

- Very *narrow* allowance for employees of foreign companies who come to the U.S. to:
  - Install, service, or repair machinery or equipment, OR
  - Train U.S. workers to use that equipment.
- Conditions:
  - The work must be tied to a contract of sale between the foreign and U.S. companies.
  - The worker must remain employed and paid abroad.
  - Activities are limited to installation, commissioning, or training — not ongoing operations.

## Example:

Engineering team  
installing M&E stay  
to manage  
production

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A German robotics firm sells an assembly line system to a U.S. auto plant.

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Engineers can enter on B-1 to install and commission the machinery, and to train U.S. staff.

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Issue: Engineers stay on to manage day-to-day production. No longer allowed.

# Risk Points

- Applying Abroad.
  - Officers look for intent
  - Applicant describes purpose vaguely —*helping with operations*’ ‘coming for work’ —sounds like employment
- Entering the U.S. (POE)
  - CBP has the final say for admission even with visa.
  - Traveler describes purpose of visit – to ‘observe’ systems. CBP officer checks LinkedIn. Traveler listed as ‘leading the U.S. implementation.’
- U.S. worksite
  - *Who is on site? What visas do they have? What are they doing?*

# Contractors

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- Independent contractors are not ‘employees’ for I-9 purposes
- This general rule leads to several misconceptions which have significant consequences
- Calling someone an IC does not make it so
  - DHS uses common law definition to determine whether someone is truly an IC
- Unlawful to knowingly contract with an IC who is not authorized to work in the US
  - Cannot deem someone an IC to avoid obtaining a work visa
  - Cannot fire unauthorized workers and rehire as IC

# Contractors

- Even valid ICs are subject to immigration laws
- IC entering under ESTA/B-1 cannot perform employment activity
- IC cannot receive pay or compensation from a US source, other than expense reimbursement
- IC must prove the primary source of profit from the activity is the home country (not the US)
- Limited exception for equipment installation/service if explicitly part of sales contract between US customer and foreign provider

# Recommendations



# Recommendations

- Preparing clients & foreign nationals for compliance and government interactions
- Contractor classification audits & risk navigation
- Broader counseling to prevent escalation
- I-9 compliance – self audit
- Protocols
- Pre/post visit
- Single POC

Questions?

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