

USCIS Employer Site Visits: What Employers Need to Know

Updated April 2017

The USCIS Fraud Detection and National Security (FDNS) unit conducts unannounced inspections of the worksites of employers who sponsor foreign workers. The purpose of site inspections is to verify the information that employers provide in their immigration petitions and to make sure that sponsored workers are complying with the terms of their admission.

FDNS has been making employer site visits for several years, focusing principally on H-1B employment. In 2014, the agency expanded the program to include site inspections of L-1A employers. The Trump Administration plans to expand FDNS inspections in the coming months and to broaden the program to other types of employment-based immigration categories beyond the H-1B and L-1A.

The following updated Frequently Asked Questions address the latest developments in the site visit program, based on Fragomen's continuing analysis of FDNS practices. If your company is contacted by an FDNS officer, call your designated Fragomen professional immediately to discuss options, including the possibility of having counsel present during a site visit.

1. Why does USCIS make employer site visits?

FDNS conducts site visits under two initiatives. Under FDNS's Administrative Site Visit and Verification Program (ASVVP), immigration petitions are randomly selected for inspection. The FDNS inspector may arrive at the worksite unannounced, or contact your organization by email to request responses to questions about the organization, the immigration petition and the organization's immigration program generally. The email inquiry may be followed by an in-person inspection.

Benefits Fraud Assessments (BFAs) are initiatives that review specific immigration programs – such as the H-1B or L-1 program – to determine the incidence of fraud or technical violations in that particular program. A BFA typically lasts for several months. During this time, USCIS randomly selects a large number of petitions or applications for benefits in the particular category being assessed. The agency analyzes the results, and then may issue a public report on the rate of fraud and program violations in the immigration category under review. The BFA program has been on hold for several years, but is expected to be revived.

In both programs, cases are assigned to FDNS officers, who visit the premises of sponsoring employers to verify the existence of the employer, the validity of the information the employer has provided in an immigration petition, and whether sponsored foreign nationals are working in compliance with the terms of their admission to the United States.

2. What are the Trump Administration's plans for the FDNS site visit program?

The Trump Administration has announced that it will target three categories of H-1B employer for increased site visits: (1) H-1B dependent employers; (2) employers who place H-1B workers at third-party worksites; and (3) employers whose businesses cannot be verified through publicly available information.

The Trump Administration is also expected to increase the scope of the site visit program to cover more nonimmigrant categories. The Administration is reportedly planning to issue an executive order on employment-based immigration programs in the near future that would expand the program in several key respects.

The draft order would direct DHS to immediately revive the Benefits Fraud Assessment program, which could result in a sharp increase in site inspections. Within six months after the order is issued, the Administration is expected to expand the L-1 site visit program to include L-1B specialized knowledge nonimmigrants, whether they applied under their employer's corporate blanket petition or were beneficiaries of individual L-1 petitions at USCIS Service Centers. Within two years, expansion of the FDNS program to all immigration categories is expected.

3. Does USCIS give advance notice of a site visit?

An FDNS officer may contact your organization by email or phone to request information and documents, possibly followed by an in-person visit. In other cases, the officer may arrive at the worksite unannounced.

4. Can I request our Fragomen attorney's presence during the site visit?

You can ask to have counsel present during the site visit, especially because your attorney has submitted a Form G-28 notice of appearance, confirming that the company has legal representation in connection with each petition it files. In our experience, FDNS officers will not typically reschedule a site visit so that an attorney can be physically present, but may agree to allow counsel to be present by phone. In the alternative, you may contact your Fragomen professional with questions during the course of the site visit. If the officer is resistant, you should explain that having the company's immigration counsel present or available by phone will help the employer respond fully and accurately to the officer's questions and requests for information.

5. Who are the FDNS officers? Can I ask to see the officer's identification?

Site visitors are employees of U.S. Citizenship and Immigration Services. In the past, some visitors were employees of private investigation firms that contracted with USCIS to conduct site visits for FDNS, but that practice has been discontinued.

When an FDNS officer appears at your company premises, you should ask to see his or her identification and business card. If you have any concerns about the visitor's credentials, you may call the telephone number on the business card to verify the visitor's authority to conduct the inquiry. You should note the site visitor's name, title and contact information for your company's records of the site visit.

6. My company has a policy of admitting government officials only when they have a subpoena. Must we cooperate with the FDNS officer?

Fragomen strongly urges employers to cooperate with FDNS officers.

In submitting petitions for immigration benefits, employers subject themselves to reasonable inquiries from the government. The regulations governing immigration petitions expressly allow the government to take testimony and conduct broad investigations relating to the petition. Employers who file

nonimmigrant and immigrant petitions on behalf of employees authorize the release of any information from its records that USCIS might need to determine eligibility for the immigration benefit sought. The instructions to petition forms state that USCIS may verify the information submitted in the petition through any means that the agency deems appropriate, including on-site inspections. Thus, it is important to make efforts to cooperate with FDNS officers.

This does not mean that there are no off-limits requests. Depending upon all of the circumstances, an employer may conclude that a government request is not sufficiently related to the immigration petition being verified and could decline to respond to a particular request. But it is important to weigh your company's interests before deciding not to respond, because a failure to cooperate fully could jeopardize the specific immigration petition in question and compromise the company's likelihood of success in future filings.

7. What happens during an FDNS site visit?

Usually, the officer is making the site inspection to verify information in a specific immigration petition, and will generally have a copy of the petition. The officer may ask to speak to an employer representative, such as a human resources manager, as well as the foreign beneficiary of the petition in question and his or her direct supervisor or manager. The officer may ask for a tour of the employer's premises and the foreign national's work area, and may want to photograph the premises. Employers may be asked to provide documents like W-2 forms, payroll records or paystubs for the foreign national, or an organizational chart.

Sometimes, the officer will email the company and request written responses to questions, as well as relevant documents. Depending on the responses, the officer may elect not to make an in-person visit to the worksite.

8. What if the foreign employee is absent on the day of the visit?

If the employee whose immigration petition is the subject of the site visit is absent due to vacation, medical leave or other authorized leave, the officer may agree to reschedule the visit.

9. If a foreign employee is stationed at a third-party worksite, could FDNS conduct a visit at that site?

The FDNS officer typically conducts the site visit at the worksite of the foreign beneficiary of an immigration petition, whether the worksite is the employer's own premises or the premises of a client. If your company has a foreign employee stationed at a client site – for example, to perform services for a client pursuant to a contract with your company – an FDNS officer could seek to conduct a visit at the client site. Likewise, if a foreign national employee of another company is stationed at your company's worksite, FDNS could seek to visit your premises to interview the employee.

Therefore, employers should communicate with vendors and/or clients to discuss the possibility of FDNS visits at either premises. Your clients should be asked to contact your organization immediately if an FDNS officer appears for a site visit pertaining to one of your employees, so that a representative from your company can be present in person or by phone during the visit. Similarly, if your organization receives a site visit pertaining to a vendor's employee, you should immediately contact the vendor.

10. What can H-1B dependent employers expect during a site visit?

H-1B dependent employers – those whose workforce consists of 15% or more H-1B employees – are among the types of employers that USCIS plans to target for increased site visits.

FDNS officers visiting the worksites of H-1B dependent employers are expected to verify whether the employer is meeting its obligation to recruit U.S. workers and to refrain from displacing U.S. workers with H-1B employees, among other issues. If the employer is exempt from those obligations, the inspector will seek to determine whether H-1B employees are paid the required salary to qualify the employer for the exemption. Inspectors may ask for copies of paystubs, job advertisements and other documents related to the recruitment and non-displacement obligations.

11. Should a company representative accompany the FDNS officer during the site visit? Should the representative take notes?

Yes, a company representative should accompany the officer while he or she is onsite. Be aware that the FDNS officer may decline the representative's request to sit in on interviews with foreign employees, however.

During the site visit, the company representative should take detailed notes, including the officer's name, title and contact information; the names and titles of individuals the officer interviews; the questions asked during interviews; any company documents provided to the officer; the areas of the worksite that the officer visits; and any photographs taken by the officer. If company documents are provided to the officer, the company representative should be sure to list the documents provided and retain their copies. If the FDNS officer takes photographs of the premises, the representative should ask for copies of them.

12. How long does an in-person site visit usually last?

In our experience, FDNS officers typically spend anywhere from 15 to 90 minutes at the employer's site, with visits usually taking under an hour. However, longer visits are possible.

13. My company has already received a visit from an FDNS officer. Should we expect additional visits?

Multiple visits to an employer's worksite are possible. If an employer has multiple H-1B and/or L-1 employees, it may receive more than one visit, with each visit pertaining to a specific nonimmigrant petition. In addition, an FDNS officer could return to the premises to follow up on a previous visit.

14. What kinds of questions will the FDNS officer ask?

During a visit or in an email request, the FDNS officer usually works from a standard list of questions used for all employers. The officer may ask about:

- The employer's business, annual revenue and the number of employees at a particular location, in the United States or worldwide;
- Whether the employer or its representative actually signed and filed the immigration petition, to make sure that it was not filed fraudulently;
- The organization's immigration program in general, including the number of foreign nationals sponsored for nonimmigrant programs and employment-based green card;

- The foreign worker's job title, responsibilities, salary and work schedule, as well as those of other employees in similar positions;
- The foreign national's education, previous employment, residence, and family members in the United States.

The officer may also ask for documents pertaining to the company and the foreign national, including:

- The foreign national's paystubs and W-2 forms;
- Paystubs for employees supervised by the foreign national, if any;
- Organizational chart for the U.S. organization;
- Organizational chart for the related foreign organization (L-1 site visits);
- Company wage and tax documentation;
- Contracts, statements of work and/or agreements between the petitioner and an end-client, if the foreign national is placed offsite.

15. What if I don't know the exact answer to the FDNS officer's question?

The FDNS officer may ask for very specific information, like the number of all sponsored foreign workers employed by the company in the United States or the number of immigration petitions filed by the employer within a given time period. If you can't give an exact answer to the question without reviewing company records or if you need the assistance of outside immigration counsel to obtain the data, let the officer know. The officer may be satisfied with an approximate answer. If the officer asks for exact information, you can request a reasonable amount of time to gather the information sought and follow up with the officer.

16. Our company has a policy against allowing unaffiliated individuals to tour or photograph our premises. If the officer asks to see or take pictures of the worksite, must we cooperate?

Fragomen recommends that employers comply with reasonable requests to examine and photograph the employer's premises or work area. However, if your company has a strict policy against tours or photographs, you should explain that to the officer.

17. How should we prepare our personnel for FDNS site visits?

In each worksite where a sponsored foreign national is employed, your organization should designate a point of contact, such as an HR manager, to receive FDNS officers. Make sure to instruct receptionists and security personnel of the possibility of a site visit and whom to contact when an officer arrives. Instruct them to request the officer's business card and advise them that officers should not be permitted to tour the worksite or speak to employees without a company representative present.

Foreign nationals and their managers should be advised about the possibility of a site visit and what to expect during the visit.

18. What happens after a site visit?

After a site visit, the FDNS officer may contact the employer by phone or email to request additional information. In cases where there appears to be a discrepancy between the information in an

immigration petition and the circumstances at the worksite, USCIS may notify the employer of its intent to revoke the petition. If that occurs, the agency will provide the employer with an opportunity to explain any perceived inconsistencies. If there have been changes in a foreign worker's conditions of employment since the approval of the petition, the employer may need to file an amendment with USCIS.

If your organization is contacted after a site visit, let your designated Fragomen professional know as soon as possible.