Immigration Law Checklist: **Preparing Employers for Seasonal Workers**

LexVid Continuing Legal Education Program

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CLE Description

- Each year, U.S. employers hire more than 700,000 seasonal workers across agricultural, retail, warehouse, and hospitality service industries between the months of October and December. (U.S. Bureau of Labor Statistics -https://www.bls.gov/opub/ted/2024/retail-trade-seasonal-employment-buildup-and-layoff-2017-2024.htm?utm_source=chatgpt.com).

CLE Description

- This timely CLE webinar provides attorneys with the knowledge and practical tools to counsel employers on seasonal hiring compliance risks and to protect mixed-status (citizen and non-citizen) legally authorized workforces. Attendees will review federal agency mandates, case law developments such as ***Hoffman Plastic Compounds, Inc. v. NLRB*** **(535 U.S. 137, 2002)**, and enforcement patterns that may impact employer obligations during peak hiring season.
- The CLE webinar also provides attorneys with actionable legal resources—including employment-based immigration compliance checklists, audit templates, and rapid-response strategies for government inspections for client advisory services and to reduce liability exposure.

CLE Description

- Accordingly, the uptick in seasonal hiring coincides with increased federal enforcement from the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Department of Labor (DOL). Employers need guidance to prepare for government audits and inspections before the season begins.
- Employers that fail to comply with **I-9** documentation requirements, E-Verify enrollment, or visa program rules are subject to significant liability, including civil fines ranging from $272 to $27,108 per unauthorized worker (**8 U.S.C. §1324a(e)(4)(A)**), potential debarment from federal contracts, and reputational harm. (DHS - Immigration Regulations -https://www.law.cornell.edu/cfr/text/8/274a.10?utm_source=chatgpt.com).

CLE Description

- Learning Objectives:
- ✅ Conduct proactive **I-9 and E-Verify** compliance reviews before the seasonal hiring period.
- ✅ Counsel employers on lawful seasonal hiring job postings, avoiding discriminatory citizenship preferences under **8 U.S.C. §1324b**.
- ✅ Navigate disputes involving undocumented or visa workers, applying ***Hoffman Plastic Compounds, Inc. v. NLRB***, 535 U.S. 137 (2002).
- and related case law precedent.
- ✅ Develop and implement rapid-response plans for ICE and DOL investigations.
- ✅ Coordinate compliance obligations across DHS, DOL, EEOC, OSHA, and state labor agencies.
- EEOC- Equal Employment Opportunity Commission
- OSHA- Occupational Safety and Health Administration

CLE Description

- Seasonal Hiring Best Practices:
- ☑️ Update **I-9** forms and retention policies.
- ☑️ Verify **E-Verify** enrollment and system accuracy.
- ☑️ Review job postings for immigration neutrality.
- ☑️ Confirm valid approvals for **H-2A/H-2B** workers.
- ☑️ Train HR staff on seasonal hiring standard operating procedures.
- ☑️ Develop ICE/DOL inspection rapid-response binder.
- ☑️ Document worker classification decisions.

Legal Framework

- **8 U.S.C. §1324a** – Employer Sanctions for Unauthorized Employment.
- **8 U.S.C. §1324b** – Unfair Immigration-Related Employment Practices.
- **8 C.F.R. §274a.10** – Civil Penalty Schedule ($716–$28,619 per worker).
- ***Hoffman Plastic Compounds, Inc. v. NLRB***, 535 U.S. 137 (2002).

SCOTUS Case Law

- ***Hoffman Plastic Compounds, Inc. v. NLRB* (535 U.S. 137, 2002):** Petitioner hired Jose Castro based on documents appearing to verify his authorization to work in the United States, but laid him and others off after they supported a union-organizing campaign at the Petitioner's plant. Respondent National Labor Relations Board (Board) found that the layoffs violated the National Labor Relations Act (NLRA) and ordered backpay and other relief.
- At a compliance hearing before an Administrative Law Judge (ALJ) to determine the amount of backpay, Castro testified, *inter alia*, that he was born in Mexico, that he had never been legally admitted to, or authorized to work in, this country, and that he gained employment with petitioner only after tendering a birth certificate belonging to a friend born in Texas.

SCOTUS Case Law

- ***Hoffman Plastic Compounds, Inc. v. NLRB* (535 U.S. 137, 2002):** Based on this testimony, the ALJ found that the Board was precluded from awarding Castro relief by **Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984)**, and by the Immigration Reform and Control Act of 1986 (IRCA), which makes it unlawful for employers knowingly to hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility.
- The Board reversed with respect to backpay, citing its precedent holding that the most effective way to further the immigration policies embodied in IRCA is to provide the NLRA's protections and remedies to undocumented workers in the same manner as to other employees. The Court of Appeals denied review and enforced the Board's order.

SCOTUS Case Law

- ***Hoffman Plastic Compounds, Inc. v. NLRB* (535 U.S. 137, 2002):** *Held:* Federal immigration policy, as expressed by Congress in IRCA, foreclosed the Board from awarding backpay to an undocumented alien who has never been legally authorized to work in the United States. Pp. 4—14.
- (a) The Supreme Court has consistently set aside the Board's backpay awards to employees found guilty of serious illegal conduct in connection with their employment. See, *e.g.*, ***Southern S. S. Co.* v. *NLRB*, 316 U.S. 31, 40—47**.

Legal Framework

- **E-Verify: The Web-Based Verification Companion to Form I-9**
- Federal enforcement increases through DHS, ICE, and DOL audits.
- Employers face penalties for **I-9** errors, visa misuse, and unlawful hiring practices.
- Attorneys play a critical role in proactive compliance and audit defense.

Legal Framework

- "**Form I-9** has been the foundation of the employment eligibility verification process since 1986, when employers began verifying the employment authorization and identity of new hires under IRCA. To improve the accuracy and integrity of this process, USCIS operates an electronic employment eligibility confirmation system called E-Verify.
- **E-Verify** is a web-based system that allows employers and other participants to confirm the eligibility of their newly hired employees to work in the U.S. by electronically matching information on the employee's **Form I-9** against records available to the Social Security Administration (SSA) and DHS. E-Verify is free and is available to participants in all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands."

Attorney Advisory Focus Areas

- Conduct proactive **I-9 and E-Verify** audits before seasonal hiring period.
- Counsel on lawful job postings and anti-discrimination compliance.
- Prepare clients for ICE/DOL inspections and rapid-response protocols.
- Advise on lawful use of **H-2A and H-2B** visa programs.
- Train human resources (HR) and legal compliance staff on documentation and retention.

Attorney Advisory Focus Areas

Category	Purpose	DOL Role?	Key Citation
H-2A	Agricultural temp. workers	✔ PERM exemption / WHD / OSHA	8 U.S.C. § 1188
H-2B	Non-agricultural seasonal workers	✔ Prevailing wage / WHD	8 U.S.C. § 1101(a)(15)(H)(ii)(b)
H-1B	Specialty occupation	✔ LCA / WHD	8 U.S.C. § 1101(a)(15)(H)(i)(b)
J-1	Exchange visitors	✘ (DOS program)	22 U.S.C. § 2452
TN (USMCA)	Canadian/Mexican professionals	✘ DOL limited	8 U.S.C. § 1184 note
E-3	Australian specialty workers	✔ Prevailing wage	8 U.S.C. § 1101(a)(15)(E)(iii)

White House Update: Presidential Proclamation (Sept. 19, 2025)

- President Donald J. Trump signed a Presidential Proclamation to restrict the entry into the United States of certain **H-1B** aliens as nonimmigrant workers, requiring a $100,000 payment to accompany or supplement **H-1B** petitions for new applications to curb abuses that displace U.S. workers and undermine national security.
- The Proclamation restricts entry for aliens as nonimmigrants to perform services in specialty occupations in the **H-1B** program unless their petition is accompanied by a $100,000 payment.
- The United States Departments of Labor (DOL) and Homeland Security (DHS) are to issue joint guidance for verification, enforcement, audits, and penalties.

White House Update: Presidential Proclamation (Sept. 19, 2025)

- President Donald J. Trump issued a proclamation suspending the entry of certain **H-1B** nonimmigrant workers.
- Petitions for **H-1B** entry may require a $100,000 payment per petition.
- DHS and DOL directed to revise prevailing wage rules for high-skilled workers.
- Attorneys should evaluate clients' pending visa petitions for compliance and exceptions.
- **Source: White House Fact Sheet (Sept. 19, 2025).**

Attorney Advisory – Public Policy

- The Presidential Proclamation may delay or restrict **H-1B** seasonal employment programs.
- Employers relying on temporary skilled foreign labor must reassess workforce planning for the seasonal period.
- Counsel should coordinate with employment-based immigration law and corporate compliance teams.
- Law firms and in-house counsel may assist clients with employment-based immigration law petition strategy.

Legal Compliance Checklist for Employers

- I. **Pre-Hiring Compliance** • Conduct a full internal **I-9** audit before seasonal hiring begins. • Verify E-Verify enrollment and ensure all HR staff have login access. • Review job postings to confirm immigration-neutral language (avoid 'U.S. citizens only' unless legally required). • Update **Form I-9** templates and confirm retention policies comply with
- **8 C.F.R. § 274a.2**. • Confirm any prior Notices of Inspection from ICE have been resolved.

Legal Compliance Checklist for Employers

- II. **Hiring & Onboarding** • Ensure HR completes Section 1 of **Form I-9** on or before the first day of employment. • Ensure Section 2 of **Form I-9** is completed within three business days of hire. • Confirm that all seasonal and permanent employees follow identical hiring procedures. • Advise employers to review visa documentation for all **H-2A/H-2B** workers before start dates.

Legal Compliance Checklist for Employers

- III. **Training & Policy Updates** • Provide HR compliance training focused on **I-9** accuracy, retention, and **E-Verify** procedures. • Update anti-discrimination and immigration policy statements to reflect **8 U.S.C. § 1324b**. • Remind managers about anti-harassment and wage/hour policies for seasonal staff. • Encourage employers to communicate written overtime and scheduling policies before the seasonal rush.

Legal Compliance Checklist for Employers

- IV. **Government Inspection Preparedness** • Develop an ICE/DOL inspection rapid-response binder containing key contacts, policies, and prior audit reports. • Designate a compliance officer and legal counsel contact for inspection coordination. • Prepare draft response templates for Notices of Inspection and audit findings. • **Advise clients to respond within the statutory 3-day window to ICE audit notices**.

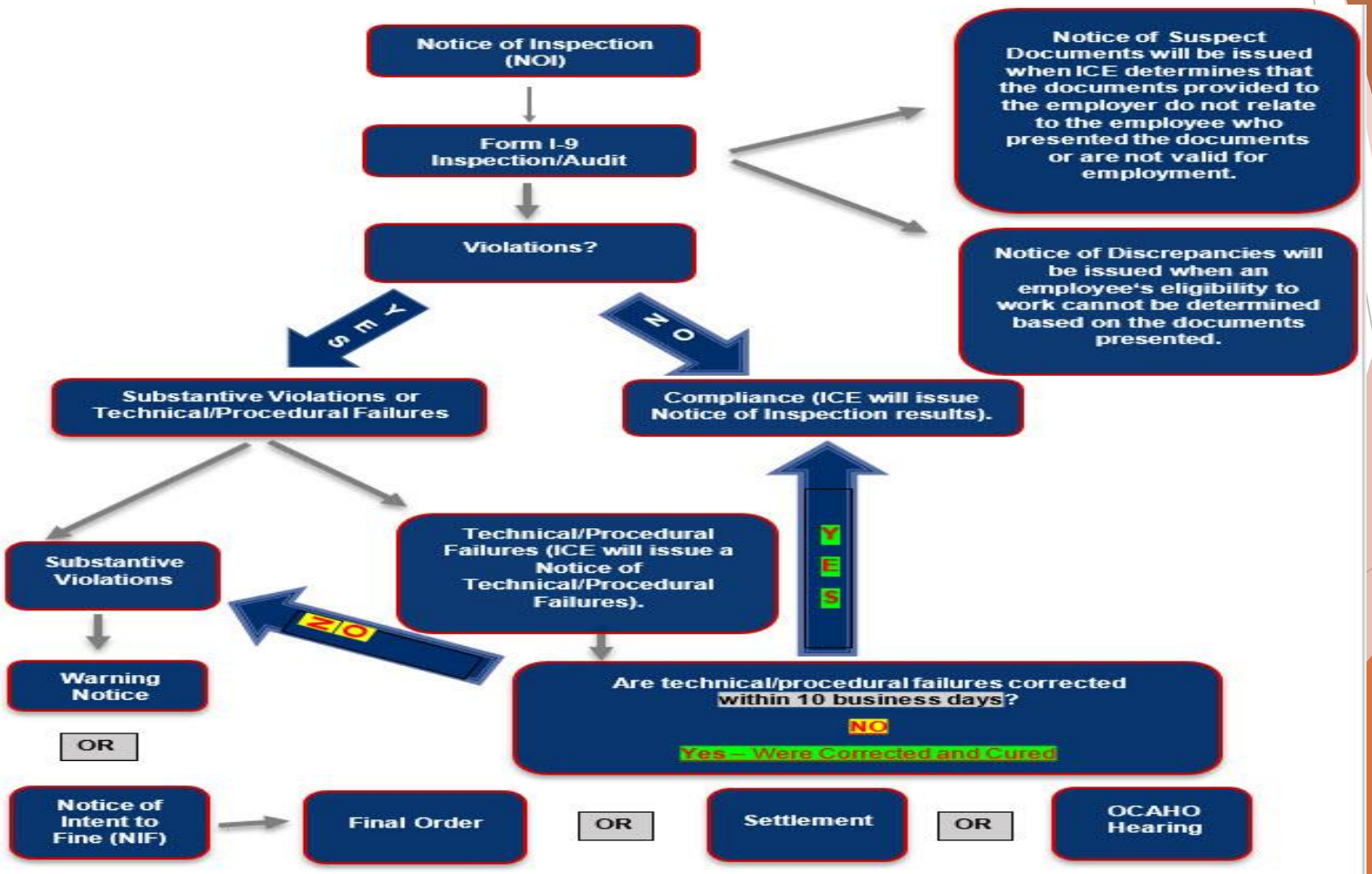
Legal Compliance Checklist for Employers

- "Employers who are found to have knowingly hired or continued to employ unauthorized workers under **INA § 274A(a)(1)(a) or (a)(2) (8 U.S.C. § 1324a(a)(1)(a) or (a)(2))** will be required to cease the unlawful activity and may be civilly fined and/or criminally prosecuted. Additionally, an employer who is found to have knowingly hired or continued to employ unauthorized workers may be subject to debarment by HSI (Homeland Security Investigations) under **48 C.F.R. § 9.406-2(b)(2)**.
- Upon completing its inspection of an employer's **Form(s) I-9** and any related supporting documentation, HSI will notify the employer of its findings in writing by issuing one of the following notices:"

Legal Compliance Checklist for Employers

- **Notice of Inspection Results**
- **Notice of Suspect Documents**
- **Notice of Discrepancies**
- **Notice of Technical or Procedural Failures**
- **Warning Notice**
- **Notice of Intent to Fine (NIF):** May be issued for substantive violations, uncorrected technical or procedural failures, knowingly hired violations, and/or continuing to employ violations.

Legal Compliance Checklist for Employers



Legal Compliance Checklist for Employers

- V. **Recordkeeping & Documentation** • Maintain **Form I-9** separately from personnel files for easier audit access. • Retain **Form I-9** for three years after hire or one year after termination, whichever is later.
- Remember: Keep **E-Verify** case reports and correspondence in a centralized compliance folder. • Ensure all visa records, job postings, and pay statements are stored for DOL review.

Legal Compliance Checklist for Employers

- VI. **Legal Framework Reference** • **8 U.S.C. § 1324a** – Employer Sanctions for Unauthorized Employment. • **8 U.S.C. § 1324b** – Unfair Immigration-Related Employment Practices. • **8 C.F.R. § 274a.10** – Civil Penalty Schedule ($716–$28,619 per worker). • ***Hoffman Plastic Compounds, Inc. v. NLRB***, 535 U.S. 137 (2002). • U.S. Bureau of Labor Statistics (BLS): Retail Trade Holiday Employment Buildup (2024)

Legal Takeaways

- Seasonal hiring increases legal compliance risks across industries.
- Proactive **I-9** audits can prevent significant fines and reputational harm.
- Attorneys add measurable value through federal guidelines reviews and training for HR/staff.
- Collaboration between law firms and in-house counsel ensures ongoing legal compliance and workplace productivity during the seasonal period.

Legal Takeaways

1. **Define Temporary Status**: Clearly communicate the temporary nature of the position to avoid misclassification.
2. **Wage and Hour Compliance**: Ensure compliance with the Fair Labor Standards Act (FLSA), including minimum wage and overtime provisions.
3. **Non-Discrimination**: Adhere to anti-discrimination laws to ensure equal employment opportunities.
4. **I-9 Compliance**: Complete the Employment Eligibility Verification form for all new hires.
5. **Safety Protocols**: Implement necessary safety measures, especially for temporary or seasonal workers.
6. **Recordkeeping**: Maintain accurate records of hours worked and wages paid.

Questions & Answers



Conclusion

