



Top 5 Takeaways for Employers as Attorney General Announces Aggressive Immigration Stance

Insights

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The Department of Justice (DOJ) recently announced a significant shift in immigration enforcement policy under Attorney General Pam Bondi's leadership, prioritizing aggressive prosecution of immigration-related violations – including at the workplace. In a memo issued to all DOJ employees, Bondi said that the “nation faces historic threats from widespread illegal immigration.” As a result, “immigration enforcement” now tops the DOJ's list of prosecution priorities. While this shift should come as no surprise given the new administration's immigration focus, employers should use this February 5 guidance as a reminder to take proactive steps to ensure immigration compliance. Here are the five biggest takeaways for businesses looking to stay one step ahead of the current changes.

1. Expect Increased Criminal Prosecution for Immigration Violations

The main point in AG Bondi's February 5 “General Policy Regarding Charging, Plea Negotiations, and Sentencing” memo is that DOJ has directed U.S. Attorney's Offices across the country to use “all available criminal statutes to combat the flood of illegal immigration . . . and to support the DHS's immigration and removal initiatives.” The memo cites provisions of the law (8 U.S.C. §§ 1324-1328) that pertain to imposing criminal penalties for harboring, hiring, or continuing to employ individuals without lawful US work authorization – as well as discrimination in recruitment, hiring, and employment based on national origin or citizenship status, or falsifying any immigration documents, petitions or applications. For employers, this means three main things:

- **Employers knowingly hiring unauthorized workers** face heightened legal risks under federal criminal statute.
- You can expect **more criminal investigations** into employers found to have committed workplace immigration violations – even seemingly unintentional mistakes.
- Companies with a history of non-compliance may be **prioritized for enforcement actions**.

2. State and Local Law Enforcement Will Play a Bigger Role

AG Bondi's memo emphasizes that federal authorities will coordinate with state and local agencies, allowing them to make certain immigration-related arrests under federal law. It also states that the DOJ will investigate incidents where state and local actors resist, obstruct or otherwise fail to comply with “immigration-related commands and requests.” That means that you can expect to

receive increased scrutiny from local authorities, not just federal agencies. With expanded law enforcement involvement, we expect to see an increase in the number of audits and raids carried out in workplaces across the country.

3. Immigration Compliance Failures Could Lead to Criminal Obstruction Charges

The DOJ's guidance memo makes clear that it is prioritizing enforcement against individuals and businesses that obstruct federal immigration enforcement efforts. Employers need to know that the DOJ takes the position that businesses that fail to cooperate with audits or investigations – not just ones that actively hinder or interfere with enforcement – could face charges under the federal statute that prohibits any “conspiracy to defraud” the federal government. In fact, some employers and business owners across the country have already been charged with harboring undocumented workers, which has been a pretty rare action in the past.

4. Mandatory Reporting Will Increase Employer Risk

Another key point under AG Bondi's memo is that each U.S. Attorney's Office across the country must now track and report immigration-related cases and convictions. DOJ attorneys who fail to pursue immigration-related cases will be monitored and could face consequences. This will obviously increase the likelihood that employers will face heightened scrutiny. Because immigration-related violations will be more visible and subject to DOJ oversight, you should expect increased follow-ups on any prior audits and investigations that you may have previously been subject to. This also means that businesses in industries with high immigrant workforces (like agriculture, hospitality, construction, etc.) will likely face targeted enforcement efforts.

5. You Must Take Immediate Proactive Compliance Steps

With heightened enforcement now a certainty, businesses should act immediately to minimize legal risks. We recommend you follow the steps outlined [in our previous Insight](#), including:

- Understand the risks of immigration violations;
- Take steps to minimize the chances of facing a workplace raid, including conducting internal I-9 audits, implementing training programs, strengthening your internal reporting mechanisms to flag compliance risks, and consider using E-Verify;
- Know the difference between an audit and a raid, and train your key personnel to know how to handle both enforcement actions;
- Partner with your FP counsel to develop a compliance action plan before you face any action from the government and to help prepare for potential enforcement actions.

Conclusion

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Immigration Practice Group](#). Our [Employers' Rapid Response Team](#) (877-483-7781 or DHSRaid@fisherphillips.com) is on call to provide immediate legal counsel when a raid occurs, assist with documentation and compliance review, and provide post-raid support and strategy assistance.

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Jocelyn Campanaro
Partner
303.218.3667
Email



Angelica M. Ochoa
Partner
303.218.3667

303.218.3669

Email

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