



## Workplace Immigration Law in 2025: What Restaurants Should Expect

Immigrants are an important part of the restaurant industry—over 20% of all U.S. workers in the restaurant and foodservice industry. Many immigration policies will change in the coming months. The National Restaurant Association and the Restaurant Law Center are actively monitoring these developments to keep our industry informed and prepared.

We have partnered with the law firm of Fisher Phillips to pull together information on top workplace immigration issues to address some of the changes already taking place.

### Heightened Immigration Enforcement

President Trump has pledged to focus on immigration enforcement, and his announcement that former U.S. Immigration and Customs Enforcement (ICE) Acting Director Tom Homan would serve as the new “border czar” is strong indication that employers should anticipate major changes. Also, on day one, the President signed an Executive Order specifically enhancing immigration enforcement, giving Homan additional tools. With Homan set to lead an aggressive enforcement strategy, restaurants should take concrete steps to be prepared to handle potential ICE audits and raids. Below are five practical preparation suggestions for restaurants to consider:

1. **Understand the risks of immigration violations** – Employers who fail to comply with immigration regulations face significant penalties, including:
  - a. Civil fines
  - b. Criminal penalties
  - c. Debarment from lucrative federal contracts
  - d. Operational disruptions
2. **Take steps to minimize the likelihood of a raid** – A proactive approach is essential to reduce the chances of an ICE visit. Some core areas for compliance that employers should address immediately include:
  - a. Establish I-9 compliance
  - b. Conduct regular I-9 audits
  - c. Provide managers and HR employee training
  - d. Consider using E-Verify
  - e. Establish a rapid response plan.
3. **Know How to Respond if ICE initiates an audit** – This is the most common way in which restaurants might end up interacting with enforcement officials. An ICE audit is often initiated through a Notice of Inspection, which requires employers to produce I-9 forms and

additional records within 72 hours (three days). If your restaurant receives such a notice, you should:

- a. Contact legal counsel immediately
  - b. Gather and verify documentation
  - c. Review findings and correct errors
4. **Know what to do if subjected to an ICE raid** – Raids are highly disruptive, often involving immediate inspections and potential detentions. We suggest you follow these steps to stay compliant while minimizing operational risks:
  - a. Request and examine the warrant
  - b. Monitor but don't interfere
  - c. Avoid actions that could be construed as harboring
  - d. Document seized property or records
  - e. Manage public relations
5. **Prepare for workforce disruptions and absences** – If fear of raids affects attendance, know that certain forms of collective action, including work stoppages, may be protected by the National Labor Relations Act (NLRA) – regardless of whether your workers are unionized. Train managers to engage with employees in a neutral, supportive manner and avoid threatening discipline for legally protected concerted activity.

At our webinar, we will be joined by Davis Bae, Regional Managing Partner and immigration law expert at Fisher Phillips. In a recent interview with an industry publication, he discussed how impending ICE visits would affect our suppliers across the country, and provided steps restaurants and other business owners should take to protect themselves and their employees. He highlighted that the USDA estimated in 2022 that 45% of all U.S. farmworkers are undocumented. In California, that number is closer to 50%.

## **More Scrutiny of Work Authorization and Visa Programs**

Immigration reform was a centerpiece of the first Trump Administration, and we anticipate more of the same during his second. We expect the new Administration to set limits on work authorizations for F-1 students on OPT/STEM OPT and H-4 spouses, as well as humanitarian programs like Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). We also expect to see policy changes designed to limit H-2A, H-2B, H-1B, E-3, L-1, and TN work visas and increased scrutiny of work visa petitions through Requests for Evidence. These policy changes would have a significant impact on our workforce, as the restaurant industry legally hires many individuals with work authorization under these visas.

Changes to the nonimmigrant H-2A visa category, designed for agricultural workers, would have an impact on our suppliers, and changes to the nonimmigrant H-2B visa category, designed for seasonal workers, would have a direct impact on the hospitality industry. Final rules to modernize both temporary worker programs to enhance flexibility, strengthen worker protections, and improve program efficiency, became effective on January 17, 2025. These changes from the Department of Homeland Security (DHS) will positively impact the restaurant industry, in addition to many others. We are not sure what to expect from the new Administration regarding these changes.

## **Mandatory E-Verify+**

E-Verify+ is a new government tool that aims to streamline workplace eligibility verification. As the new E-Verify+ moves from a trial to full implementation, we expect to see the federal government take steps to make its use mandatory. Of course, creating new HR solutions that properly synch with the new government portal may prove to be quite difficult. We do not recommend whether to use E-Verify, but for those restaurants that already use E-Verify, there are three potential benefits from moving over to the E-Verify+ system:

- It allows employees to enter their own personal information and documents.
- Workers and employers both receive direct notification of employment status.
- Verification status is carried over to new employment.

### **Uncertainty After Chevron Overturned**

The Supreme Court's landmark ruling last year in the *Loper Bright* case gave our industry a powerful tool to fight back against regulatory overreach and it will continue to have a broad impact in every area of workplace law. While the end of "Chevron deference" is largely viewed as a win for our industry, we expect to see two sides to the immigration impact. On the one side, employers will have more tools to challenge federal agency regulations that make it harder to hire and retain foreign national employees. On the flipside, you may see helpful regulations tied up in litigation as well.

### **Conclusion**

We will continue to monitor developments related to all aspects of workplace immigration law.

A reminder: This document is intended for informational purposes only. Nothing should be taken as legal advice nor relate to any client matter that may be considered privileged or confidential. We encourage you to contact your immigration attorney directly in confidentiality to discuss specific matters.

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