

Information Paper



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Contact: Terry Shawn Jennifer Kaplan
Phone: 202-693-4676 202-693-5052

Frequently asked questions on audit of permanent labor certification applications filed by attorneys at Fragomen, Del Rey, Bernsen & Loewy LLP

(1) Why are we doing this?

The U.S. Department of Labor has a statutory responsibility to ensure that foreign workers are not hired to fill jobs where qualified, able and willing U.S. workers are available. To fulfill this responsibility, the Department requires employers to recruit for U.S. workers before foreign workers can be hired for permanent positions, and to attest to the Department in their applications that the job opportunity has been and is clearly open to U.S. workers and that any U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons. Audits of applications are one of the major tools the Department uses to ensure program integrity.

The Department's regulations specifically prohibit an employer's immigration attorney or agent from participating in considering the qualifications of U.S. workers who apply for positions for which certification is sought, unless the attorney is normally involved in the employer's routine hiring process. Where an employer does not normally involve immigration attorneys in its hiring process, there is no legitimate reason to consult with immigration attorneys before hiring apparently qualified U.S. workers who have responded to recruitment required by the permanent labor certification program. The Department's rule safeguards against the use of attorneys to find reasons not to hire U.S. workers that the employer would, but for the attorney's involvement, deem qualified. The rule applies only to consideration of particular applicants, and does not bar employers from seeking general advice on the meaning of "qualified" in the context of a labor certification application.

The Department is auditing all employer applications filed by attorneys at Fragomen, Del Rey, Bernsen & Loewy LLP because it has information indicating that in at least some cases the firm may have improperly instructed clients who filed permanent labor certification applications to contact their attorney before hiring apparently qualified U.S. workers.

(2) What incident/incidents prompted this audit?

The Department identified information indicating that in at least some cases the firm may have improperly instructed clients who filed permanent labor certification applications to contact their attorney before hiring apparently qualified U.S. workers. Specifically, several recruitment forms drafted by some Fragomen attorneys instructed their clients that "After interview, should any of the applicants appear to be qualified for the position, please contact a Fragomen attorney immediately to further discuss the candidate's background as it relates to the requirements stated for said position," or some variation thereof.

(3) How unusual is this type of audit?

Audits of applications are one of the major tools the Department uses to ensure program integrity. Audits are conducted regularly. Where the Department identifies an employer or attorney that appears to have a practice that violates the program's rules, the Department has authority to audit all applications submitted by that employer or attorney/agent to determine which, if any, were affected by the unlawful practice.

(4) Are the audits a form of punishment?

Audits are not a punishment. Audits are used by the Department to thoroughly examine applications to ensure that all program requirements have been properly followed. They are routine and regularly undertaken to ensure program integrity.

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