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PLAYBOOK

EMPLOYER IMMIGRATION PROGRAM

The Problem Nobody Warned You About

Here is the situation I encounter repeatedly across Northern Virginia: an HR Director at a 60-person technology company, a General Counsel at a professional services firm, a CHRO at a healthcare-adjacent startup. They are managing a workforce that includes H-1B employees, PERM candidates in progress, and new international hires set to start in Q2; with no outside immigration counsel, no compliance program, and no audit trail.

Their I-9 binders have not been reviewed since onboarding. Their H-1B Public Access Files are incomplete. Their PERM timelines are being tracked in a spreadsheet. And in the background, ICE I-9 audit activity is at its highest enforcement level since 2009.

This is not an edge case. It is the default condition of the SMB employer in Northern Virginia that has grown to the point of needing an immigration program but has not yet built one. And by the time most companies realize what they are missing, the gap has become expensive; a failed I-9 audit, a disrupted H-1B transfer, a PERM labor certification that restarts because the employer's records could not support it.



MOST COMPANIES DON'T REALIZE THIS UNTIL IT IS TOO LATE

Managing employer immigration without a structured program is not a cost-saving strategy. It is a deferred liability. Every I-9 not properly completed, every H-1B not properly maintained, and every PERM not properly documented creates exposure that compounds silently; until a single audit, a single RFE, or a single border encounter makes the entire structure visible at once.



The Question They Have Not Asked Yet

You have international employees. You have visa holders on staff. You have PERM candidates in your pipeline. But do you have a documented, defensible employer immigration program? One that would survive an ICE audit notice delivered with 72 hours' notice? Most HR Directors in this position assume their current process is adequate. Is yours?

Why This Matters Right Now

Even companies that feel their current process is manageable are operating in a fundamentally different enforcement environment than they were 18 months ago.



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Three Reasons Timing Determines Outcome

1 | H-1B Cap Season Opens; Companies Without Counsel Will Miss the Window

H-1B cap registration opens on a fixed federal calendar. Companies that have not engaged outside immigration counsel by the time registration opens face a compressed preparation window: incomplete prevailing wage analyses, missing supporting documentation, and cap filings submitted without proper employer attestation. The cap is a hard deadline. Preparation is not.

2 | ICE I-9 Audit Activity Is at a Multi-Year High

Under the 2025-2026 enforcement environment, ICE is conducting I-9 audits with Notice of Inspection letters delivered with response windows as short as 72 hours. Companies that have never had a formal I-9 audit preparation process have 72 hours to produce compliant records for every employee on their payroll. The audit does not wait for counsel to be engaged. The program has to be ready before the notice arrives.

3 | The SMB Immigration Program Gap Is a Competitive Disadvantage

Large employers in Northern Virginia operate full employer immigration programs managed by large immigration firms or comparable national firms. The 50-person company competing for the same international talent pool is operating without any program at all. IS Law Firm closes this gap: the same program design, the same compliance infrastructure, at SMB-accessible pricing under a single retainer.



TIMING OFTEN DETERMINES OUTCOME

For Northern Virginia employers the combination of elevated I-9 enforcement activity, the opening H-1B cap season, and the absence of structured employer immigration programs among most SMB companies in the NoVA corridor creates a critical need for compliance audits. This window moves. H-1B registration has a hard close. ICE notices do not give advance warning.

The Three Core Problems IS Law Firm Solves

#1

Core Problem

No Employer Immigration Program Means No Defense When It Matters

What It Is

Most SMB employers in Northern Virginia are managing employer immigration reactively: filing H-1B extensions when they come up, completing I-9s at onboarding without subsequent audit review, and running PERM labor certifications through external vendors who do not maintain the employer's underlying compliance infrastructure.

This is not an employer immigration program. It is a series of individual transactions with no audit trail, no policy backbone, and no institutional knowledge when a key HR contact leaves.



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The Risk

An ICE I-9 audit does not evaluate individual forms. It evaluates the employer's systemic compliance. A company that cannot demonstrate a documented I-9 policy, a consistent completion process, and a periodic self-audit program faces fines calculated per form; not per company. At \$272 to \$2,701 per substantive violation and up to \$27,018 per knowing employment violation, the exposure for a 75-person company with six years of unchecked I-9 records is not a minor correction. It is an operational crisis.



COMMON MISTAKE

Treating I-9 compliance as a one-time onboarding task rather than an ongoing program. The form is completed on Day 1. The liability accumulates every day thereafter; through re-verification failures, missing reverification deadlines, and document retention errors. IS Law Firm's compliance audit identifies every open exposure before an ICE inspector does.

A LAWYER WOULD ASK YOU: If ICE delivered a Notice of Inspection to your office this morning, how many hours would it take your HR team to locate, organize, and produce compliant I-9 records for every current and former employee within the audit period? If the answer is not 'under two hours,' the program is not ready.

#2

Core Problem

Managing Visa Portfolio Risk Without a Program Is a Workforce Liability

What It Is

The H-1B is the most common work visa in the NoVA employer market. It is also the most technically demanding to maintain correctly. The employer - not the employee - bears the obligation for Public Access File maintenance, LCA posting compliance, prevailing wage determination, and timely extension filing.

HR Directors who are managing an H-1B portfolio without outside immigration counsel are personally exposed to employer attestation liability every time an LCA is signed.



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The Risk

A 120-person Northern Virginia government contractor managing 14 H-1B employees without immigration counsel had three Public Access Files that were substantively incomplete; missing the required prevailing wage determination documentation, the LCA notices, and the employer's wage policy records. A competitor's whistleblower complaint triggered a Department of Labor investigation. The back-pay liability for the wage violations discovered during that investigation was \$340,000. The PAF deficiencies that created the investigation were correctable in a single compliance audit. The investigation was not.



COMMON MISTAKE

Treating the H-1B as the employee's problem. It is the employer's legal obligation. The LCA attestation is signed by the employer. The Public Access File is the employer's record. The prevailing wage determination is the employer's responsibility. When a DOL investigation begins, it investigates the employer; not the employee.

A LAWYER WOULD ASK YOU: For each H-1B employee currently on your payroll, can you produce - within 24 hours - a complete Public Access File containing the certified LCA, prevailing wage determination, documentation of actual wage paid, and the required posting records? If any file is incomplete, the employer attestation is already under legal question.

#3

Core Problem

PERM Without Program Design Is an 18-Month Process With No Institutional Memory

What It Is

PERM labor certification is the most document-intensive employer immigration process in the federal system. It requires a minimum of 60 days of supervised recruitment activity, documented employer response to every applicant, prevailing wage determination from DOL, and a final audit-ready application that must be defended - potentially years later - if DOL selects it for audit.

Most SMB employers who have run PERM through a transactional vendor have a filed application but no institutional memory of the underlying recruitment, no defense file for a potential audit, and no attorney who knows the employer's job requirements well enough to defend the position description.



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The Risk

A DOL PERM audit notification arrives, on average, 12 to 18 months after the application is filed. The employer who outsourced the PERM to a vendor two years ago may have lost the HR contact who managed the recruitment, the documentation of rejected applicants, and the business necessity justification for the specific job requirements. A PERM audit without a complete defense file results in denial. A denial means restarting an 18-month process from the beginning; at the cost of the employee's priority date and the employer's investment in the original filing.



COMMON MISTAKE

Treating PERM as a filing rather than a program. The application is the last step. The defense file is built during recruitment. IS Law Firm builds the employer's PERM defense file contemporaneously with the recruitment process; so that a DOL audit two years from now finds an organized, complete, and defensible record, not a personnel folder with three resumes and a job posting printout.

A LAWYER WOULD ASK YOU: For each PERM application filed in the last three years, does your company maintain a complete recruitment file - documented applicant disposition records, rejected applicant correspondence, business necessity justifications, and the underlying prevailing wage determination - in a format that could be produced to DOL within 30 days of an audit notification?

IS Law Firm's Employer Immigration Program Framework

Pillar 1:

Compliance Audit & Program Assessment; Delivered Within 10 Business Days

Every IS Law Firm employer engagement begins with a comprehensive compliance audit covering five exposure areas: I-9 and E-Verify compliance, H-1B Public Access File completeness, LCA and prevailing wage documentation, PERM defense file integrity, and corporate immigration policy infrastructure. The audit is delivered as a written report with a prioritized remediation schedule. Not a checklist. Not a general assessment. A specific, employer-specific risk map with remediation sequenced by urgency.

Why This Pillar Cannot Be Skipped

The compliance audit is the foundation of the employer immigration program because it establishes the baseline: what is defensible today, what is exposed today, and what the remediation timeline looks like before the next audit window opens. IS Law Firm delivers the compliance audit within 10 business days of engagement; before the H-1B cap season, before the next ICE enforcement cycle, and before the next DOL audit notification arrives.



EACH PILLAR REQUIRES TAILORED IMPLEMENTATION

The compliance audit output is not a generic checklist. It is a legal memorandum specific to the employer's workforce composition, visa portfolio, and operational history. Two companies of similar size with similar visa portfolios can have entirely different audit profiles based on their internal I-9 processes, their PAF maintenance practices, and their PERM history. The audit identifies what a DOL or ICE investigator would find; before they find it.

Pillar 2:

H-1B Program Design & Cap Preparation; Built for the SMB Employer

IS Law Firm designs the employer's H-1B program as a standing infrastructure: prevailing wage determination protocols, LCA preparation and posting systems, Public Access File templates and maintenance calendars, and a cap registration process that is initiated 90 days before the federal registration window opens. For companies managing their first H-1B cap registration, IS Law Firm provides the program design, the cap registration strategy, and the post-selection petition workflow under a single retainer.

Why This Pillar Cannot Be Skipped

The H-1B cap is the single highest-urgency employer immigration calendar event of the year. Companies that do not have an attorney engaged and a cap strategy prepared before registration opens are filing reactively; with incomplete prevailing wage analysis, compressed preparation timelines, and no program infrastructure to support the H-1B employees selected in the lottery. IS Law Firm's H-1B program design converts a reactive filing into a managed, calendar-driven process that the employer's HR team can execute without legal expertise.



EACH PILLAR REQUIRES TAILORED IMPLEMENTATION

The H-1B program design is specific to the employer's workforce composition and hiring pipeline. A technology company with 12 H-1B employees in software engineering roles has different prevailing wage exposure, different PAF requirements, and a different cap strategy than a professional services firm with three H-1B employees in management consulting. The program is built for the employer's specific profile, not for a generic 'H-1B employer.'

Pillar 3:

Integrated Business Law & Immigration Under One Retainer

IS Law Firm being one of the very few Northern Virginia practice delivering a full Employer Immigration Program and Business Law - entity formation, commercial contracts, employment agreements, and business acquisitions - under a single retainer. For the SMB employer, this means no coordination gap between the corporate attorney who drafts employment agreements and the immigration attorney who files H-1B petitions. The employment agreement that satisfies the H-1B prevailing wage requirement is the same agreement the business attorney reviews. There are no contradictions because there is only one team.

Why This Pillar Cannot Be Skipped

The Employer Immigration Program does not operate in isolation from the employer's Business Law. Employment agreements, severance provisions, non-compete clauses, and corporate restructuring all have direct immigration consequences for visa-holding employees. A corporate attorney who is not an immigration practitioner does not review for this. IS Law Firm reviews for both; simultaneously, under one retainer, with one point of contact for the HR Director and General Counsel.



EACH PILLAR REQUIRES TAILORED IMPLEMENTATION

For growing companies hiring their first international employees: the employment agreement template, the I-9 onboarding process, the H-1B cap strategy, and the long-term immigration roadmap for key employees are all built simultaneously - as a single integrated employer program - rather than as four separate vendor relationships with four separate invoices and no coordination between them.

Documents to Gather Before Your Compliance Audit

The items below represent the starting point for IS Law Firm's Employer Immigration Compliance Audit; not the complete picture. Which documents are most critical, and how they should be organized and presented, depends on the employer's specific workforce composition, visa portfolio, and operational history.

1

Current employee roster with visa status for each worker

2

All I-9 forms completed in the last 3 years (active and terminated employees)

3

H-1B Public Access Files for all current H-1B employees

4

Certified Labor Condition Applications (LCAs) for all active H-1B employees

5

Prevailing wage determinations used in all active H-1B filings

6

PERM recruitment files and filed ETA-9089 applications (last 3 years)

7

E-Verify enrollment documentation and case history (if enrolled)

8

Current employment agreements for all H-1B and visa-holding employees

9

Corporate documents: entity structure, operating agreement, ownership records

10

Prior immigration filings: petitions, approvals, RFEs, and responses (last 5 years)

11

Written I-9 and immigration compliance policies (if they exist)

12

Payroll records for H-1B employees (demonstrating actual wage paid vs. LCA wage)

THE AUDIT REVEALS WHAT THE DOCUMENTS CANNOT SHOW ALONE

Gathering documents is a starting point, not a compliance program. IS Law Firm's Compliance Audit identifies not just what documents exist, but what documents are legally required that have never been created; missing PAF components, undocumented LCA posting records, I-9 re-verification deadlines that have already passed. These are the gaps that exist even when the employer believes their records are complete.

5 Questions to Ask Any Immigration Firm You Consider Hiring

Before engaging any firm for your employer immigration program, use these questions to evaluate whether they have built employer-side programs for companies at your size and complexity; or whether they are primarily a visa-filing shop that processes transactions without a program infrastructure.



Question 1:

How many employer immigration programs have you designed for SMB employers in the 5-to-500 employee range, and what does your typical retainer cover beyond individual visa filings?



Question 2:

Can you walk me through how you build and maintain a compliant H-1B Public Access File; including the specific documents required, the LCA posting obligations, and the employer's ongoing maintenance responsibilities after approval?



Question 3:

Have you represented employers in DOL I-9 audits or H-1B investigations, and what was the outcome of those matters; and what did the employer's pre-audit compliance program look like before the notice arrived?



Question 4:

How do you structure an employer immigration retainer so that it covers both the compliance program maintenance and the individual case filings; and what is the process when a new visa category need arises that was not anticipated at engagement?



Question 5:

What is your process for integrating employer immigration compliance with the employer's business law needs - employment agreements, corporate restructuring, and business acquisitions - and do you have business law counsel in-house or do you refer out?



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A FIRM'S ANSWERS REVEAL MORE THAN THEIR CREDENTIALS

The specificity of the answers - particularly on PAF maintenance, DOL audit experience, and integrated business law coverage - tells you more about employer-side practice depth than any marketing materials. A transactional visa shop will give transactional answers. A program firm will give program-level answers, including the names of the specific forms, the specific DOL regulations, and the specific employer attestation obligations that their retainer covers.



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5 Mistakes That Put Employers at Compliance Risk

These errors appear repeatedly in the employer files IS Law Firm reviews at the remediation stage. Every one of them is preventable; but only if the compliance gap is identified before the audit notice, the investigation notice, or the visa denial arrives.

Managing I-9 Compliance as an Onboarding Task Rather Than an Ongoing Program

The I-9 is completed on Day 1. The compliance program runs for the life of the employment relationship. Re-verification deadlines for time-limited work authorization, document retention requirements for terminated employees, and the systematic review process that catches errors before they become violations; none of these exist if the employer's I-9 program ends at onboarding.

Filing H-1B Extensions Without Reviewing PAF Completeness First

An H-1B extension approved by USCIS does not cure a deficient Public Access File from the prior approval period. The employer's obligation to maintain a compliant PAF runs from the LCA certification date; which means every prior approval period is a potential DOL audit exposure, even if the current extension is filed correctly.

Outsourcing PERM to a Vendor Without Building a Defense File

The PERM vendor files the application. The employer owns the defense file. A DOL audit notification arrives at the employer's address; not the vendor's. If the employer cannot produce a complete recruitment file, an applicant disposition record, and a business necessity justification within 30 days of the audit notice, the application is in jeopardy regardless of how correctly the form was prepared.

Treating Corporate Restructuring as a Business Event Rather Than an Immigration Event

An H-1B employee's petition is tied to a specific employer entity. A merger, acquisition, name change, or significant change in corporate structure is a material change in employment that may require amended H-1B petitions, new LCA certifications, and a review of every visa-holding employee's status. Corporate attorneys who are not immigration practitioners do not flag this. The gap is discovered when a visa-holding employee attempts a border crossing after the restructuring; and the CBP officer flags the mismatch.

Operating Without an Integrated Legal Team

The employment agreement drafted by the business attorney and the H-1B petition prepared by the immigration vendor are the same legal instrument from the government's perspective. If they are not consistent - on job title, work location, salary, and job duties - the employer has a documentary conflict that a DOL investigator or USCIS officer will identify immediately. IS Law Firm is structured to prevent this conflict because there is only one team.

Frequently Asked Questions



We already have an outside immigration attorney who files our H-1B petitions? Why do we need an employer immigration program?

A petition filer is not a program. Your current attorney may be filing H-1B extensions correctly while your Public Access Files are deficient, your I-9 re-verification deadlines are being missed, and your PERM defense files are incomplete. IS Law Firm's compliance audit evaluates the employer's full compliance posture; not just whether individual petitions were filed correctly. The two services are not substitutes for each other.



How does IS Law Firm's retainer compare in cost to a national firm delivering large immigration firm's standards?

IS Law Firm is designed specifically for the NoVA SMB employer who needs large immigration firms-quality program design at a price point calibrated for a 5-to-500-person company. Our retainer structure covers the compliance program infrastructure, the individual visa filings, and the business law integration; under a single fixed-fee arrangement that the CFO can model as a predictable operating expense rather than an unpredictable legal cost.



What triggers an ICE I-9 audit, and how much notice will we receive?

ICE initiates I-9 audits through Notice of Inspection letters that are typically delivered with three business days' notice. Triggers include industry targeting (federal contractors, hospitality, agriculture, technology), whistleblower complaints, E-Verify non-participation flags, and random selection. There is no advance warning program. The audit program has to be in place before the notice arrives; not assembled in response to it.



Our company is growing quickly and may be acquired in the next 18 months. How does M&A activity affect our visa-holding employees?

IS Law Firm is designed specifically for the NoVA SMB employer who needs large immigration firms-quality program design at a price point calibrated for a 5-to-500-person company. Our retainer structure covers the compliance program infrastructure, the individual visa filings, and the business law integration; under a single fixed-fee arrangement that the CFO can model as a predictable operating expense rather than an unpredictable legal cost.



If I start with E-2, can I convert to a Green Card later?

Corporate transactions - mergers, acquisitions, name changes, and significant ownership changes - are material events for every H-1B, L-1, and O-1 employee on your payroll. Depending on the transaction structure, amended petitions, new LCA certifications, and a comprehensive portfolio review may be required before the transaction closes. IS Law Firm provides M&A immigration diligence as part of the integrated retainer; so, the acquirer is not inheriting undisclosed immigration liabilities.



We have never filed a PERM application. When should we start planning for employees who will eventually need green card sponsorship?

PERM planning should begin the day the employee is hired; not the day they ask about green card sponsorship. The PERM process requires a minimum recruitment period, a prevailing wage determination from DOL, and a defensible position description. Starting from a clean slate with proper documentation is typically faster and less expensive than correcting an employment history that was not built with PERM in mind. IS Law Firm builds the PERM roadmap into the employer's program from Day 1 of the retainer.



The Decision That Changes Everything

Every Northern Virginia employer that has built a defensible, audit-ready immigration program made one decision first: they engaged immigration counsel before the audit notice arrived, before the H-1B cap registration deadline compressed their preparation window, and before a corporate event triggered an immigration liability they did not know existed.

The compliance audit that starts that process takes 10 business days. You receive a written report identifying every open exposure in your employer immigration program, a prioritized remediation schedule, and a retainer proposal covering the full program design - I-9, H-1B, PERM, and business law integration - under a single fixed fee.

Request Your Employer Immigration Compliance Audit →

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Confidential One-on-One Strategy Review



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