



ICE Raids and Form I-9 Audits Are Here

President Trump issued an aggressive package of immigration executive orders over the last week and has swiftly acted on his promise-- the largest mass deportation in U.S. history. The plans are not limited to the raids we are seeing in workplaces by Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS). President Trump has made clear his administration will also focus on employer Form I-9 enforcement and compliance as part of its focus on illegal immigration.

This crackdown on federal immigration law will impact employers nationwide. If audited or raided, employers can experience loss of workers, disruption to operations, and penalties.

Here is what you could expect and some ways you can prepare your workplace:

Form I-9 Audits: Audit & Train

The new administration has plans to increase its scrutiny of employer compliance with Form I-9, Employment Eligibility Verification by conducting an increased number of both *targeted and random employer Form I-9 audits*.

- ICE and the DHS have the authority to appear at your workplace with or without notice to demand inspection of various types of employment data, including a list of workers, articles of incorporation, dates of hire and termination, pay and tax records, Form I-9s, corresponding identity verification documents and more.
- If your business is subject to an I-9 audit, it will have only three business days to produce the data and forms requested.
- Non-compliance with the Form I-9 process can result in **significant fines**. These fines will be levied for issues from having incorrectly filled out the forms, missing the forms altogether and to knowingly hiring unauthorized workers.
- The best thing you can do to prepare is promptly conduct an internal I-9 audit to ensure compliance and ensure your I-9 processes are up to code. Employers should also provide training to those tasked with handling the Form I-9 process to ensure they are doing so properly.

Our Firm offers two I-9 audit services to ensure compliance with both federal and state immigration laws, identifying compliance issues and providing guidance on how to remediate them. We also offer a training course on properly administering the Form I-9 process. Contact us for more information.

ICE Raids: Have a Rapid Response Plan

Employers should also prepare for workplace raids by DHS or ICE.

- These raids will occur with or without advanced notice and either at random or based upon information known to them.
- During a raid, DHS or ICE agents may apprehend and deport undocumented workers, often with force.

- Employers should develop a rapid response plan on what to do in the event of a raid and ensure their employees are aware of their rights, including the right to remain silent, the right to consult with an attorney if detained, and the right to refuse a search of their personal belongings or person.

Employers: Keep Calm and Know Your Rights

While employers have certain rights and obligations when ICE arrives, employers should absolutely not unlawfully obstruct legal government actions, such as hiding employees, providing false or misleading evidence, or destroying documents. It is important to remain calm and professional during a raid; even if you believe your rights are being violated, hostile or confrontational behavior may lead to escalation and additional legal issues.

That said, employers have several important rights:

- **Warrants:** Before the raid begins, employers can exercise the right to inspect any warrant ICE is acting under. It is advisable to take time to understand the difference between a judicial warrant, which is a warrant signed by a judge, and an administrative warrant, which is a warrant from the Department of Homeland Security or another non-judicial entity.
- While employers must comply with judicial warrants, an ICE raid taken under an administrative warrant can only lawfully enter your business if you give them permission.
- Judicial warrants are often limited in scope: employers may carefully review the scope of the warrant to ensure that the raid does not go beyond its judicially sanctioned limits. In some states, employers may face legal penalties if they consent to a raid in a nonpublic area that is not supported by a judicial warrant.
- **The Raid:** When a raid commences, employers would be well advised to contact legal counsel immediately.
- You may also designate an employee to accompany agents, take notes of the process (particularly if any items are seized), and ensure that the raid does not go beyond the scope of the warrant.
- To the extent permitted by state law, you may record the raid and document the areas searched, the items seized, who (if anyone) was arrested, and any conversations between you, the employees, and the agents.
- You can also ask for the names and badge numbers of the agents and officers involved in the raid.
- Employers and employees may always exercise their right to remain silent. While obstruction is not allowed, employers are under no obligation to assist in the raid. This can include not answering whether an employee is present at the work site during the raid, declining to help agents sort employees based on their immigration status, and speaking to your attorney if you believe your rights or the rights of your employees are being violated, or if you are asked to sign a document by ICE.

Be Ready

By preparing yourself and your employees for how to respond to an ICE raid, you can protect yourself, the company, your employees, and comply with the law.

If you need help developing a response plan, we can help.

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