

ICE RAID RESPONSE PLAN FOR EMPLOYERS

1. Assemble an ICE Response Team.

An employer should designate an ICE Response Team and establish a contact list to be deployed in the event of any ICE enforcement actions. The response team should include:

- *Designated Front Desk Staff:* The receptionist should be trained to interact with ICE agents professionally and to notify the agent that company policy requires him or her to contact company leadership and legal counsel.
- *Legal Counsel:* Immigration and employment lawyers to advise on rights and compliance.
- *Senior Management/Company Leadership:* A senior manager or executive who should clarify the scope of the visit and accompany ICE officers to non-public spaces to review what is taken, if anything.
- *Security/Operations Lead:* Security personnel can ensure that ICE does not access non-public areas without legal authority.
- *Company Spokesperson:* A senior manager or executive authorized to communicate with ICE and external parties.

2. Train the ICE Response Team on what to do during an ICE raid.

a. Receptionist should contact the company's management team member on the response team who should then contact counsel. The receptionist can tell officers, "Our company policy is to contact our company management and lawyer, and I'm doing that now." Your lawyer may be able to come to the worksite quickly to assist or speak to the ICE officers over the phone.

b. Request and verify the agent's credentials and record his badge number and contact information.

c. Do not allow a warrantless search. Employers are not required to give ICE access to non-public areas of the facility without a valid judicial warrant. The company is entitled to this, so ask for it, review it and send a copy to your attorney. Monitor ICE's inspection of the facility to ensure it complies with the scope of the warrant. Make sure you understand the difference between a judicial warrant and an administrative warrant.

- A judicial warrant is issued by a court, signed by a judge, and allows agents to access non-public spaces of your facility. You are required to comply with it, but be sure to review it first to verify that it is properly signed and dated by a judge, is

specific to your company and address, includes a timeframe within which the search must be conducted, and has a description of the premises to be searched and a list of items or people to be seized (e.g., equipment, records, workers).

- An administrative warrant – Form I-200 or I-205, signed by ICE but not a judge – does not allow access to non-public spaces, so you are not required to let the agents go into those areas.
- If presented with a judicial search warrant, your company can accept the warrant but not consent to the search. If you do not consent to the search, the search will proceed, but you can challenge it later if there are grounds to do so.
- Object to a search outside the scope of the warrant. Do not engage in a debate or argument with the agent about the scope of the warrant. Simply present your objection to the agent and make note of it.
- Depending on the type of business, ICE may demand that equipment be shut down and that no one leave the premises without permission.
- ICE may move employees into a contained area for questioning.
- While some agents question employees, others will likely execute the search and seizure of items listed in the warrant.

d. Get the contact information for the ICE agents and their supervisors who are conducting the raid, as well as the U.S. attorney assigned to the case.

- Assign at least one company representative to follow each agent around the facility. Your employee may take notes or videotape the officer if permitted. Inventory the items taken by ICE during a raid. Designate who will inventory the items seized during the search though ICE is required to provide this inventory to you. If they do not, be sure to ask for it.

e. Protect privileged materials.

- If agents wish to examine documents designated as attorney-client privileged material (such as letters or memoranda to or from counsel), tell them these documents are privileged and request that attorney-client documents not be inspected by the agents until you are able to speak to your attorney.
- If agents insist on seizing such documents, you cannot prevent them from doing so. If such documents are seized, try to record in your notes exactly which documents were taken by the agents.

f. Do not hide employees or assist them in leaving the premises. Do not provide false or misleading information, falsely deny the presence of named employees, or shred documents.

g. Notify employees about their rights. They may decline an interview by ICE agents, and they have the right to remain silent.

- Ask ICE if your employees are free to leave. If they are not free to leave, they have a right to an attorney.
- Enforcement actions can sometimes last for hours. If an employee requires medication or medical attention or if employees have children who need to be picked up from school, communicate these concerns to the ICE officers.
- Though you should not instruct your employees to refuse to speak to ICE, they also have the right to remain silent and do not need to answer any questions about their immigration status, where they were born, or how they entered the United States. They may exercise their right to remain silent and may ask to speak to an attorney.
- If ICE tries to determine the immigration status of your employees by asking them to stand in groups according to status, they do not have to move, or they can move to an area that is not designated for a particular group.
- They may also refuse to show identity documents that disclose their country of nationality or citizenship.
- If your employees are detained or taken into custody, be sure that their families are contacted, and any money owed to the employees is paid.

3. Prepare a contingency staffing plan in case of arrests. Consider what preparations may be appropriate to ensure the continuity of your business operations in the event of a worksite raid, such as cross-training on key functions or establishing a relationship with a staffing vendor who can supply qualified labor if it becomes necessary.

4. Post-Raid Issues. The investigation does not end after ICE leaves the premises. ICE and the U.S. Attorney will thoroughly review the items seized during the raid and the investigation, including undercover surveillance, which can continue for many months.

OTHER ICE ENFORCEMENT ACTIONS – ICE I-9 AUDIT

ICE has the authority to conduct various types of worksite enforcement actions to enforce compliance with US immigration laws. Apart from a raid, ICE can conduct an I-9 audit to inspect an employer's I-9 forms and related documents for compliance with employment verification rules. Unlike a raid, ICE will provide an employer at least three business days to

produce the requested documents. If ICE intends to conduct an administrative I-9 audit, it will serve the employer with a Notice of Inspection (NOI) to put the company on notice that it is being audited. ICE may request a variety of documents including, but not limited to, I-9 forms and supporting documents, payroll lists, tax forms, articles of incorporation, and electronic I-9 documentation. An employer may choose not to produce the items until ICE presents an administrative subpoena specifying the required documents. An administrative subpoena is issued by an agency like ICE rather than a judge, so it is relatively easy for ICE to obtain. If an administrative subpoena is not attached to the NOI, you can tell ICE that your organization can only release the requested documents upon presentation of a subpoena. This will give your organization a little more time to get your records together. Review the subpoena carefully and clarify the scope of any unclear requests with the assigned ICE agent. Note that any corrective efforts you make after the NOI is issued will not be counted.

I-9 COMPLIANCE BEST PRACTICES

During this era of heavy immigration-related enforcement, I-9 compliance should also be top of mind. Noncompliance and I-9 errors can result in hefty fines, so time is of the essence to get your I-9 house in order. What can an employer do?

- Conduct an internal I-9 audit now to catch and correct errors to reduce your potential liability. An internal I-9 audit is also one of the best ways an employer can demonstrate its commitment to complying with the I-9 laws. Consider partnering with experienced outside counsel to ensure your internal audit is properly conducted to avoid increasing scrutiny and liability inadvertently. ICE can mitigate an employer's liability at its discretion based upon any good faith efforts the employer has made to comply with I-9 rules.
- Review and shore up your I-9 policies and practices. If the company does not have a policy, consider establishing one, which will demonstrate that your company takes its I-9 obligations seriously. Of course, you should only create a policy if your organization is committed to following it.
- Conduct periodic I-9 training for employees who prepare I-9 forms for your organization. The high turnover of personnel who are often tasked with preparing I-9 forms can lead to inconsistencies and errors. Provide periodic training so the employees involved in carrying out the organization's important I-9 function have a clear and consistent understanding about how to complete I-9s properly.
- Keep I-9 forms and supporting documents for active and terminated employees in binders separate from personnel files. If ICE presents a judicial subpoena, they will

be entitled to seize those documents immediately. If I-9 forms are combined with personnel files, you risk ICE seizing entire personnel files.

- Purge I-9s for terminated employees once the required retention period expires. Employers must keep I-9s on file for all active employees for the duration of active employment. For terminated employees, an employer is only required to retain the I-9 forms for the longer of one year from the termination date or three years from date of hire. For ease, use this free, online I-9 retention calculator: <https://www.uscis.gov/i-9-central/completing-form-i-9/retention-and-storage>.
- Consider whether onboarding E-verify or an electronic I-9 system will improve your company's I-9 compliance.

The Bottom Line

The significant increase in worksite enforcement activity by ICE, including the arrest of undocumented workers, shows no signs of abating. While some of the Trump administration's immigration initiatives and policy changes have been blunted by legal challenges, the same cannot be expected for current widespread worksite enforcement efforts. Employers should consider the preparation actions recommended in this Alert to be a matter of urgency and critical to your defense strategy if your organization is hit with an enforcement action. Taking steps to prepare now could mean the difference between heavy fines, operational disruption, and possible criminal penalties in egregious cases versus the continuity of your business operation.