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## Immigration Audits and Raids: Employer Preparations to Mitigate Risks

This Alert will provide steps employers can take to prepare for increased Immigration and Customs Enforcement (ICE) audits and raids under the Trump Administration.

### Immediate Action Item for All Employers: Have a Plan and Be Ready

Seven executive orders by President Donald Trump have expanded federal agencies' authority to arrest and detain undocumented individuals. Increased raids and unannounced workplace visits by ICE mean employers should have a plan in place for how to respond. Employers and contractors may face two types of investigations: ICE Audits and ICE Raids.

#### **ICE Audit**

Involves inspecting employment verification documents, such as Form I-9 and E-Verify, and lists of employees, wage reports, payroll records.

#### **ICE Raid**

Involves inspecting. Usually involves a search warrant based on probable cause that immigration violations are occurring. ICE demands immediate access to premises and records.

**3-Day Notice/Compliance.** Generally, a Notice of Inspection (NOI) is issued to employers prior to ICE conducting the audit. The objective is to identify errors and patterns of unfair immigration practices.

**Immediately contact counsel upon receiving notice of any ICE investigation.**

**Tip:** Conduct regular internal I-9 audits and ensure proper completion and storage of all required documentation.

**Tip:** Retain employment records and document efforts of good-faith compliance with employment and immigration laws.

**Unannounced:** The objective is to detain undocumented individuals working for U.S. employers.

Agents can enter any public areas of a business without a warrant. To enter private areas, the ICE agent must have a signed **judicial search warrant** or the employer's consent. Administrative warrants (see below) issued without a District Court judge's signature do not give agents authority to enter without consent.

**Tip:** Photograph or video the raid if permitted. Ensure security cameras are recording. While you have the right to record enforcement actions, do so openly and without interfering with the agents.

## 8-Steps to Mitigate Risks

- 1. Train** employees on proper I-9 compliance. Ensure that you have completed Form I-9s for all active employees, make corrections to I-9s as soon as an error is identified and retain Form I-9s for the mandatory period for terminated employees. Keep I-9 records separate from personnel files.
- 2. Designate** a single person to be the primary point of contact in case of an ICE raid and consider establishing protocols and training to designated company representatives. Create a detailed plan that outlines roles, responsibilities and procedures for different types of ICE visits. This plan should be readily accessible to all relevant staff members, especially a front desk receptionist.
- 3. Request** and review judicial search warrants and document the name and contact information of the agent(s). Judicial warrants, signed by a judge, give law enforcement officers, including ICE, the authorization to make an arrest, a seizure or a search. An administrative warrant, however, does not grant authority to enter private areas without consent. Administrative warrants generally appear on Form I-200 or I-205 and can be signed by an immigration judge or an immigration officer.
- 4. Contact** your legal counsel and have a plan for dealing with the media and public relations.
- 5. Create** a clear written policy designating which areas are closed to the public. ICE agents may enter public areas, such as a lobby, waiting area or parking lot, but they cannot access private areas without a judicial warrant. Employees should understand which areas ICE agents may enter without a warrant to avoid inadvertently consenting to a search.
- 6. Accompany** the ICE agent(s) during the raid and photograph or video record the raid if permitted. While you have the right to record enforcement actions, do so openly and without interfering with the agents. Make immediate backup copies of any surveillance footage and store them securely.
- 7. Stay calm** and do not obstruct or interfere with the search. Do not hide employees, aid in escape from the premises, shred documents, or provide false or misleading information. Remind employees that the company has the right to have counsel present and employees can remain silent until counsel is present. ICE should not demand to interview anyone without counsel present.
- 8. Document** all areas searched and all items seized during the raid. Take detailed notes of the entire process. Maintain a list of employees present during the raid. Record what areas were searched. Document any conversations or interactions with agents. Keep copies of all documentation provided to ICE or by ICE. Obtain receipts for any documents taken by ICE.

While there are no ways to completely inoculate your company or its work sites from increased enforcement efforts, the above measures can be taken to mitigate risks.

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