

Guidance on immigration enforcement actions



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On January 26, 2025, at the direction of President Donald Trump, the U.S. Department of Homeland Security's Immigration and Customs Enforcement ("ICE") agency began carrying out raids and arrests targeting undocumented immigrants in major U.S. cities.

In light of this development, it is important for nursery businesses to make sure that they are prepared for an ICE enforcement action.

ICE agents are most likely to come to your business for one of two reasons. The first is to conduct an inspection of your I-9 Employment Authorization Verification records. The second is to conduct an immigration enforcement raid to find and detain undocumented workers.

You cannot prevent ICE enforcement actions at your business. However, you and your employees can be prepared in case such an action occurs.

General guidance

Here is some general guidance regarding all ICE activities at your place of business.

Understand that you are protected by your constitutional rights. Try to remain calm and professional in your interactions with ICE agents or other federal officers.

You are entitled to federal constitutional protections against unreasonable searches and seizures. ICE is required to follow procedures designed to protect those rights, including the use of warrants and subpoenas before accessing any records or any portion of your business premises. Make sure your front-line employees know that they must not give permission to ICE agents to access any portion of the property. They should instead immediately notify a manager who should ask whether the agents have a warrant or subpoena.

If you are served with a warrant or a subpoena, ask for identification (a business card) from the agent presenting the warrant or subpoena. Ask whether the purpose of the visit is a raid (requiring a warrant) or an I-9 document audit. Ask to review any warrant or subpoena and take your time to understand it. Call your attorney immediately and get him or her a copy of any document(s) presented.

Review warrants carefully. If the agents present a search warrant, examine it carefully. It should identify the agency or officers conducting the search, the location to be searched, the specific items or individuals to be seized (if known), and an expiration date if it is a court order. There are two types of warrants:

An administrative warrant is issued by employees of a federal agency and is not self-enforcing. Administrative warrants will be issued by the agency seeking to search the premises such as "Department of Homeland Security, U.S. Immigration and Customs Enforcement." You can refuse admission to agents presenting an administrative warrant. They must then get a court order to enforce their right to search.

A judicial order is self-enforcing and gives the agents permission to search company property. Judicial warrants are issued by a court such as "The United States District Court for the District of Oregon." Resisting a judicial warrant may result in contempt of court charges.

Warrant-based seizures. With a judicial warrant, ICE may confiscate phones, laptops, etc. Ask ICE to "image" the technology without taking devices. Likewise, with any documents ICE confiscates, you should make copies before the documents leave the premises.

If the purpose of the visit is an I-9 audit and the agent does not have a warrant, you are legally entitled to three ➤

days' advance notice before the inspection may commence. This is true even if the agent has a subpoena. Agents are required by law to notify an employer of the right to a three-day notice prior to review. You should exercise this legal right and decline immediate review. Then, contact legal counsel immediately.

Understand that an ICE inspection is often the first step in a criminal investigation. Once ICE agents appear on your premises, you should inform your managers and human resources staff of the investigation and remind them of their rights and obligations. All of your employees have a right to legal counsel and may assert that right at any time as a basis to decline an interview or other questioning by ICE agents. None of the company's management should consent to an interview without first speaking to the company's legal counsel. Statements made by any managerial staff may be treated as admissions against your business in subsequent proceedings.

Follow all verbal instructions given by ICE or other law enforcement personnel, even if the instructions appear to conflict with the advice of your attorney.

Don't attempt to interfere with the process or you may be subject to criminal charges. Do not take any steps to notify non-management personnel or help employees hide or leave the premises. Do not make general announcements of the raid over company radios, send runners into the fields to announce the activity, or take any other action that will tip off employees.

Observe the investigation process. Company management may (and should) accompany ICE agents during the search. If there is more than one agent conducting the search, assign a manager to each officer. Take notes as to what occurs (what documents are inspected, who is contacted by the agent(s), whether the agents seem to be badgering or singling out any specific employees or class of employees). You may film or record those actions, provided that you do not interfere in any manner.

Advise legal counsel if the agents seek to expand the investigation beyond the scope of the warrant or subpoena. ICE

Disclaimer

This guidance document is intended to inform the reader of general legal principles applicable to the subject area. It is not intended to provide legal advice regarding specific problems or circumstances. Readers should consult with competent counsel with regard to specific situations.

or U.S. Department of Labor agents are limited by the scope of a warrant or subpoena. They may not expand the search beyond what is in the four corners of the document. If you observe that occurring, you should contact legal counsel immediately.

Remember — no subpoena is required for a routine I-9 document audit, provided that the three-day notice period is observed. However, in that case, you are only required to produce the I-9 forms for inspection.

In the worst-case scenario, members of your organization may be arrested. Should that happen, you should instruct your employees to immediately invoke their right to speak to an attorney. Under no circumstances should the person respond to any questions after invoking the right to speak to an attorney. If possible, find out where the person will be taken.

Recognize that your employees may be traumatized — including those whose work authorization status is not in question. You should prepare a message to your employees in advance of an ICE enforcement action rather than waiting until it happens. You should also provide employees with an opportunity to ask questions and be prepared to direct them to outside resources that may help inform

them as to their rights. If you have an employee assistance program (EAP), you should notify your EAP provider about the ICE action so they are prepared for phone calls from your employees. Remind your employees about the EAP benefit available to them and provide them with the phone number.

Be prepared. The best way to get through an ICE enforcement action is to be prepared. You should develop an ICE enforcement response plan and train your management staff on how to implement the plan. The plan should set forth the roles, responsibilities, and procedures for different types of ICE actions. In addition, the plan should include a list of important contact information, including local ICE detention centers, foreign consulates, and immigration attorneys. If your management staff is prepared, they will understand how to handle unannounced government visits in a professional and appropriate manner.

I-9 recordkeeping and inspections

Here is some guidance regarding I-9 recordkeeping and ICE I-9 inspections:

Recordkeeping practices. Ensure you have meticulous I-9 compliance by confirming proper verification, document storage, and destruction practices at all sites. Make sure you stay current with form updates. I-9 records should be kept separate from personnel files.

Conduct a self-audit of your I-9 records. The best thing a business can do to be prepared for an ICE I-9 records inspection is to conduct a self-audit of those documents and the company's procedures. The purpose of a self-audit is to identify deficiencies in I-9 processes and paperwork and then take legal steps to correct them. A self-audit not only helps with compliance, but a self-audit is also considered part of an employer's good faith defense in the event I-9 violations are found by ICE. Learn more about how to perform an I-9 self-audit at [TinyURL.com/JDI9Audit](https://www.tinyurl.com/JDI9Audit). We recommend contacting legal counsel or a knowledgeable human resources consultant with I-9 audit experience to assist you in the process.



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ICE I-9 inspections. If ICE agents arrive at your business to conduct an I-9 document inspection, there are several things that you should know and do.

Contact legal counsel immediately.

An I-9 document inspection does not require a warrant. However, ICE agents may present a subpoena in conjunction with an inspection, suggesting that you need to comply with it immediately. However, you are entitled to three days advanced notice of an inspection, and ICE cannot use a subpoena to shortcut that advance notice requirement.

The U.S. Department of Labor is also authorized to perform I-9 audits, so it is important to understand which agency is seeking to review your records and under what circumstances.

Only allow investigators to see the records they are legally entitled to see. During an I-9 audit, you are technically required to produce only the I-9 forms for inspection. If ICE wants to see anything else, you can require the agent to get a valid warrant or subpoena. You are not required to keep or produce photocopies of the documents employees presented to establish identity and/or employment eligibility.

Don't allow documents to be removed from your property without making copies. Don't turn over more documents than the law requires. Nothing in the law requires you to give ICE original I-9 forms or to make photocopies of the I-9 forms.

Treatment of employees by government agents

Subject to an individual's right to legal counsel, an ICE officer can interrogate any alien, or person believed to be an alien, as to his or her right to remain in the United States. Agents may also question witnesses regarding their knowledge of business policies relating to:

- The hire of undocumented workers.
- The identity of individuals suspected of undocumented status.
- The terms and conditions of employment of such persons.
- The duration of their employment.
- The knowledge of supervisors regarding the undocumented sta-

tus of such persons.

- Business acquaintances of undocumented workers.

An ICE agent or other officer may not restrain the freedom of an individual who is not under arrest, unless the agent or officer has a fact-based reasonable suspicion that the person being questioned is, or is attempting to be, engaged in an offense against the United States, or is an alien illegally in the United States. Where such reasonable suspicion exists, the agent or officer may briefly detain the individual for questioning.

Generally, an arrest should only be made when a designated immigration officer has a warrant for the arrest of a particular individual, unless the officer has



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a reason to believe that a person is likely to escape before a warrant can be obtained.

When someone is arrested and charged with a criminal violation of the laws of the United States, the arresting officer must advise the person of the appropriate rights required by law at the time of arrest, or as soon thereafter as practical. It is the duty of the officer to assure that the warnings are given in a language that the subject understands and that the subject acknowledges that

the warnings are understood.

ICE agents' actions

Unlike Department of Labor agents, ICE agents are frequently armed. To the extent an ICE agent determines that force is necessary, he or she may use the mini-▶▶

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Legal Access

minimum nondeadly force necessary to accomplish the agent's mission and may escalate to a higher level of nondeadly force only when a higher level of force is warranted.

Deadly force may be used only when a designated immigration officer has reasonable grounds to believe that such force is necessary to protect the officer or innocent persons from imminent danger, death, or serious physical injury.

Steps to take following an enforcement action

After an I-9 inspection or immigration raid, the Department of Homeland Security will provide a list of employees whose work authorization cannot be established. That list places you on notice that you may be employing undocumented aliens.

You must inform each employee on the list that they have been identified as not having proper work authorization. You should then give the listed employees three days to produce proper identification and documentation.

Any new identification produced by the listed employees will be verified through the Department of Homeland Security system. If the Department of Homeland Security does not authenticate the new identification, the employee must be terminated.

You must keep a list of all employees by name and Social Security Number identified by the Department of Homeland Security as being undocumented. Anyone on that list who applies for work in the future may not be hired until their work eligibility status is resolved and verified.

Each business is unique, so this guidance document is not intended to be comprehensive or tailored to your situation. But if you follow this guidance, create your own ICE enforcement response plan, and train your employees regarding their rights and responsibilities, you will have taken an important step toward protecting your business. ©