



2025 Employer's Guide: Navigating the New Landscape of Immigration Enforcement

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By: McGrath North Labor & Employment Group

In an era marked by rapid changes in immigration policies and enforcement practices, understanding the evolving landscape of immigration enforcement has never been more critical for employers and employees alike. The McGrath North Labor & Employment Group presents this comprehensive guide, "Navigating the New Landscape of Immigration Enforcement," to equip businesses with the essential knowledge and strategies needed to comply with current worksite enforcement.

What Employers Should Know if ICE Comes Knocking

As immigration enforcement intensifies under the Trump administration, employers should revisit existing practices and step up compliance efforts. With the threat of workplace raids, increased audits, and stricter compliance measures, businesses of all sizes face new challenges in maintaining a legally authorized workforce while protecting their operations. This guide is designed to help employers navigate the evolving landscape of immigration enforcement, outlining key strategies to ensure compliance, safeguard its workforce, and respond effectively to potential enforcement actions. This guide contains key information about:

- Steps to minimize the likelihood of an Immigration and Customs Enforcement (ICE) operation;
- Employer preparation and response to an ICE audit of Forms I-9;
- Employer preparation and response to an ICE raid; and
- Risks of immigration non-compliance.

Steps Employers Can Take Now To Reduce the Risk of an ICE Enforcement Action in the Future

With the increase of immigration enforcement action, there are several steps employers can take now to minimize the risk of an enforcement action. These include:

- 1) **Ensure I-9 Compliance:** All U.S. employers must properly complete Form I-9 for every individual they hire for employment in the United States. This includes citizens and noncitizens. Both employees and employers (or authorized representatives of the employer) must complete the form for every employee hired after November 6, 1986. There are no exceptions to the I-9 requirement for employers. Employers should implement a comprehensive, up-to-date I-9 compliance program business-wide.
- 2) **Complete Missing Forms I-9:** Verify that every employee hired after November 6, 1986, has an I-9 on file. Use payroll records to identify and complete any missing forms for current and former employees.
- 3) **Discard Unnecessary Forms I-9:** Forms I-9 must be retained for three (3) years after hiring or one (1) year after the employee's last day, whichever is longer. Be aware that enforcement-related penalties and fines may apply to all Forms I-9, even those no longer required to be retained.
- 4) **Train Staff and Management:** Educate those responsible for the I-9 process on proper completion procedures and actions to take if an employee may not be authorized to work in the U.S. Ensure familiarity with the USCIS I-9 Handbook for Employers M-274 (available at <https://www.uscis.gov/book/export/html/59502>).
- 5) **Conduct Regular I-9 Audits:** Perform internal audits to identify and correct errors. Consider engaging outside counsel for periodic audits to ensure ongoing compliance.
- 6) **Establish a Written Response Plan:** Prepare a written response plan which designates personnel to manage and respond during a potential ICE visit. This plan should include training designated employees in the event of an ICE visit, contacting legal counsel, ensuring compliance with subpoenas or warrants, and tracking any actions or document requests from ICE.

Employer Response to an ICE Audit of Forms I-9

A Form I-9 audit occurs when ICE inspects a business to ensure compliance with the Form I-9 regulations. Form I-9 is used to verify the identity and work authorization of all employees in the U.S. I-9 audits are the most common form of immigration worksite enforcement, allowing authorities to scrutinize an employer's hiring practices and workforce employment authorization. A timely, thorough response is critical to avoiding costly penalties, protecting your business, and ensuring compliance with federal regulations. To comply, employers should:

- **Contact Legal Counsel:** Reach out to legal counsel immediately to manage the audit response. Request an extension if needed and legal counsel may be able to coordinate with ICE agents to streamline the process.
- **Gather Required Documentation:** Collect all requested documents within the specified timeframe, ensuring accuracy and organization. In addition to Forms I-9, ICE may request additional records such as payroll documents, staffing agreements, 1099s, and E-Verify documentation, etc.
- **Make Necessary Corrections:** During an I-9 audit, employers typically have three days to produce Forms I-9 after receiving a Notice of Inspection. Legal counsel can assist in auditing these forms and making permissible corrections to reduce penalties before responding to ICE.
- **Review and Respond to Findings:** After responding to an ICE audit, it may take weeks, months or even years for ICE to reach a decision. Following their findings, ICE may allow businesses to correct certain errors and may also impose monetary penalties or issue warnings.

Employer Response to an ICE Raid

In this new era of immigration enforcement, employers should be prepared for the possibility of an ICE raid, and be primed to contact legal counsel and take the following steps to minimize legal and operational risks to the business:

- **Activate Response Plan:** Initiate the Response Plan and designate trained personnel to monitor and document ICE's activities without interfering, while maintaining a cooperative demeanor. Avoid overly combative or obstructive conduct, as it may negatively impact outcomes or expand the scope of the search. During a raid, ICE agents may detain a particular individual or group of people; they might question, detain, or arrest others as well.
- **Access to Private vs. Public Areas:** ICE agents can enter public spaces of your business without permission and without a warrant (i.e. parking lot, lobby and other areas open to visitors). For private areas, ICE agents can only enter a private area with a valid warrant signed by a state or federal judge, or if an employer gives permission to enter a private area without a warrant.
- **Verify and Review the Warrant:** If ICE or other law enforcement present a warrant in connection with the search, review the warrant to ensure the search warrant is valid and signed by a judge. Contact legal counsel and provide a copy of the warrant. If ICE presents a warrant, they will expect immediate access to the premises and employer records. In a raid of this nature, there will be no grace period to gather documents, and ICE agents will generally not delay their search for the arrival of legal counsel. Please note there are two types of warrants ICE may present, which may impact the scope of the action:
 - Administrative Warrant: An administrative warrant is issued by a government agency, such as Department of Homeland Security (DHS), and is used for civil immigration enforcement. It allows ICE to detain individuals suspected of violating immigration laws but does not authorize entry into private areas without an employer's consent.
 - Judicial Warrant: A judicial warrant is issued by a court and signed by a judge and is based on probable cause. It authorizes ICE and/or law enforcement to conduct searches or arrests, including entering private areas without an employer's consent. Judicial warrants provide broader authority and are subject to stricter legal standards compared to administrative warrants.

Employer Response to an ICE Raid (cont.)

- **Avoid Actions Perceived as Harboring:** Instruct managers not to hide employees, destroy documents, or provide false information. Employees may speak to ICE agents if questioned but are not obligated to do so without legal counsel; employees are not required to provide identification or documentation to ICE and any information shared by the employee with law enforcement can later be used against them.
- **Document and Report Seized Items:** Keep a detailed record of all items and information taken by ICE and work with legal counsel to respond to any follow up requests.
- **Manage Public Relations and Disruption to Operations:** After a raid, assess the need for a public statement and manage any disruption to operations resulting from the enforcement action.
- **Train Company Personnel on Immediate Response Actions:** In the event of an ICE enforcement action or raid, employers should advise employees:
 - stay calm;
 - immediately contact a designated company point person (and designate such a contact!);
 - inform ICE agents that they do not have authority to speak on behalf of the Company, and that they will need to speak with the designated Company contact person;
 - they have no obligation to answer questions and no obligation to provide information or materials (absent a valid warrant); and
 - they have no obligation to grant access to non-public areas (again, absent a valid warrant).

Risks of Immigration Non-Compliance

Employers face significant financial, legal and operational consequences for immigration non-compliance. These include:

- **Monetary Fines for Civil Violations** – Employers who violate Form I-9 requirements can be fined up to \$2,789 per form. Knowingly hiring undocumented workers carries a penalty of up to \$5,579 per worker for a first offense, with repeat violations reaching \$27,894 per worker.
- **Criminal Penalties** – Owners and members of management may face up to 10 years in prison and fines of up to \$250,000 for “harboring” or concealing undocumented workers and may be subject to forfeiture of certain assets and profits tied to such an offense.
- **Operations Disruptions** – ICE raids, and even the threat of a workplace-related ICE enforcement action, can have an impact on business operations and may also impact employee morale, attendance and create negative publicity for employers.
- **Federal Contract Debarment** – Non-compliance can jeopardize an employer’s ability to maintain and secure federal contracts.

Conclusion

Employers must be proactive in navigating this new era of immigration enforcement by maintaining strong I-9 compliance, conducting regular audits, training staff effectively and being prepared in the event of an ICE raid or other enforcement action. For expert guidance, contact the Immigration and Labor/Employment lawyers at McGrath North who can help with an I-9 Audit, assist with creating a written Response Plan or provide general support in taking proactive measures, for ensuring your organization is compliant and ready to face this heightened focus on immigration-related compliance.

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