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Workplace Raids: A Guide for Employers on Your Rights and Responsibilities

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Incoming “border czar” Tom Homan said President-elect Trump’s administration will crank up workplace raids as part of its broader immigration crackdown.

Speaking on “Fox & Friends” after the announcement of his nomination for the post, the former director of Immigration and Customs Enforcement (ICE) said workplace raids would address labor and sex trafficking.

The most important thing to know as an employer is that you and your employees have constitutional rights that you can and should demand. It is the responsibility of the employer to ensure that each employee is aware of their right to remain silent, the right to refuse to answer any questions about their immigration status without an attorney present, and the right to speak with an attorney.

Key steps an employer can take now to be prepared:

UNDERSTAND THE DIFFERENCE BETWEEN THE ENFORCEMENT AGENCIES

Under the Department of Homeland Security, the following agencies have the authority to conduct workplace visits and inspections:

Homeland Security Investigations (HSI) collects and inspects employers' I-9 Employment Eligibility Verification forms and other paperwork for compliance.

Immigration & Customs Enforcement (ICE) enforces immigration law and can initiate deportation proceedings. ICE agents aren’t police but they can carry guns or small clubs and may have gear that says “Police” on it.

U.S. Citizenship & Immigration Services (USCIS) audits employment-related immigration sponsorship.

HAVE A PLAN:

Employers seek an employee volunteer or designate a manager/executive to be responsible for interacting with enforcement agents. The designated people will do two important things: determine if the agents have the right kind of warrant, and deny the agents entry if they don’t. These people must be trained NOT to consent to a workplace search unless provided with a valid judicial search warrant.

Ideally, the designated employees/employee will be the one responsible for:



- Immediately alerting legal counsel
- Inspect the documentation to ensure the warrant/Notice of Inspection is valid
- Make a note of the names and badge number of the agents or officers. Remember that local police and sheriffs can also accompany and act alongside ICE agents. You have the right to demand names and badge names for all officers.
- Accompany the agents at all times. At no time should agents be able to wander and speak to employees without you present
- Ensure that the agents do not go beyond the scope of their authority, and that the constitutional rights of the employees is protected at all times.

DO NOT CONSENT TO ACCESS WITHOUT BEING PROVIDED THE CORRECT PAPERWORK

Each of the above agencies is required to follow procedures and ensure they have the proper paperwork and authority to enter the premises and conduct a search or an audit.

- **Notice of Inspection** – this is an ICE/HSI request to present I-9 forms within 3 business days. Contact an attorney before responding.
- **Immigration Enforcement Subpoena** – this usually includes a request for other documents along with the I-9s.
- **Judicial Warrant** – this warrant is signed by the judge of a court. It may allow ICE agents to enter private areas or seize documents onsite. Read the warrant. ICE is limited to the scope of the warrant. **Do not give consent beyond the scope.**
- **Administrative Warrant** – this usually has “Department of Homeland Security” at the top of the first page and is on Form I-200 or I-205, issued as part of an I-9 audit. If ICE shows you an Administrative Warrant with an Employee’s name on it:
 - You do NOT have to say whether or not that Employee is working on that day.
 - You do NOT have to take the ICE agents to the Employee named on the warrant.
- **California Employers:** Without an appropriate warrant or subpoena, California employers must not give permission or voluntarily consent to access. The employer should say “I cannot consent and I do not consent.” Be vigilant and ensure the agents do not exceed the warrant’s requirements.
- **Inventory Receipt.** If records are seized, ICE must give the company a receipt to inventory what they are taking.

TRAIN YOUR WORKFORCE ON THEIR RIGHTS

Key points to reinforce to your employees that they remember during a workplace raid:

- **Stay calm and do not run:** Fleeing can be seen as suspicious and could worsen your situation.
- **Exercise your right to remain silent:** You are not obligated to answer questions about your immigration status or personal details.
- **Ask for a lawyer:** Insist on speaking to an immigration attorney before answering any questions or signing documents.
- **Do not provide false information:** Lying to authorities can have serious consequences.
- **Document details:** If possible, note the names of officers, their badge numbers, and the time of the raid.
- **Know your rights:** Understand that even if you are undocumented, you still have basic rights during an immigration check.

PROTECTING EMPLOYEES DURING THE RAID

- Remind Employees to stay calm and NOT run to the exits. ICE agents are allowed to engage in “hot pursuit” and to arrest people suspected of violating immigration laws.
- You may video or record the ICE agents so long as you do not interfere with their permitted activities.



- With a judicial warrant, ICE may confiscate phones, laptops, etc. Ask ICE to “image” the technology without taking devices.
- Do not give voluntary consent for ICE to stop, question, or arrest anyone, or go everywhere they desire.
- Do NOT help ICE agents sort people by their immigration status or the country they are from.
- The best way for Employees to protect their rights is to stay silent and ask for an attorney. All Employees have this right. Employees do not have to hand over any IDs or papers to ICE.
- Any information that Employees give to ICE can be used against them later.
- Anyone who is arrested should ask for an attorney and a “show cause hearing.”

POST RAID STEPS:

- Write or record these things after the officers leave:
 - How many ICE agents were present (inside or outside)? What were their names?
 - How were the agents dressed? How were they armed?
 - Did the agents make you or your Employees believe you could not move or leave?
 - Did the agents threaten or mistreat anyone? If yes, how?
- If ICE arrests anyone, ask the ICE agents where they are being taken.
- If there is an I-9 inspection, prepare the documents. You can request more than 3 days to produce the records.
- California employers must post a Notice to Employees of I-9 and other immigration records inspections. (Labor Code 90.2.)

If you have follow-up questions on workplace raids, please contact Kripa Upadhyay.

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