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CLIENT ALERT

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# ICE at the Door: Employer Obligation Under California's Immigrant Worker Protection Act

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As federal immigration enforcement activities continue to impact California workplaces, employers must understand their obligations when presented with requests for employee records. The Immigrant Worker Protection Act (Assembly Bill 450) sets specific requirements for how employers must handle worksite inspections and access to employment records by immigration enforcement agents.[1] This article summarizes key provisions of the law, practical considerations for employers, and employee rights.

**When Can ICE Access Employment Records?**

Under Government Code Section 7285.1, employers, including any person acting on the employer's behalf — shall not provide "voluntary consent" to the entry of an immigration enforcement agent to "any nonpublic areas of a place of labor" without a valid judicial warrant. Separately, under Government Code Section 7285.2, employers shall not voluntarily consent to an immigration enforcement agent accessing, reviewing, or obtaining employee records without one of the following:

- A judicial warrant, which must be signed by a judge and issued by a court upon a finding of probable cause. Administrative warrants, such as U.S. Immigration and Customs Enforcement (ICE) Form I-200 or I-205, do not qualify.
- A valid subpoena, properly issued under legal authority.
- A Notice of Inspection issued under federal law, typically concerning I-9 Employment Eligibility Verification forms.

Absent these documents, granting access to nonpublic areas or employment records may violate California law and result in civil penalties.[2]

**What Is "Voluntary Consent"?**

"Voluntary consent" means the employer, or someone acting on behalf of the employer, affirmatively agrees to allow immigration agents to access records without coercion or duress. Examples of voluntary consent include freely showing agents where records are kept, opening file cabinets, or providing passwords. Whether consent was voluntary is a factual, case-by-case determination based on the totality of the circumstances.

[1] See California Labor Commissioner & California Attorney General, Immigrant Worker Protection Act (AB 450) Frequently Asked Questions, updated Feb. 18, 2025.

[2] Employers who violate Assembly Bill 450's provisions may face civil penalties ranging from $2,000 to $10,000 per violation, enforced exclusively by the California Attorney General and Labor Commissioner. See Government Code Sections 7285.1 and 7285.2.

**Notice Requirements For Record Inspections**

The law imposes strict notice requirements if an employer receives a Notice of Inspection of I-9 or other employment records:

- Within 72 hours of receiving a Notice of Inspection, employers must provide written notice to all current employees and any applicable collective bargaining representative. This notice must include:
  - The name of the immigration agency;
  - The date the employer received the Notice of Inspection;
  - The nature of the inspection, to the extent known; and
  - A copy of the Notice of Inspection. (See Labor Code § 90.2.)
- Within 72 hours of receiving inspection results**,** employers must provide each affected employee:
  - A copy of the written notice of results from the agency; and
  - Written notice explaining any deficiencies, timeframes for correction, dates of meetings with the employer, and the employee's right to representation during such meetings.

An "affected employee" includes any employee identified by the agency as potentially lacking work authorization or having deficiencies in their work authorization documents. Notices must be delivered by hand if possible, or by mail/email if hand delivery cannot be accomplished.

**Understanding Public vs. Nonpublic Workplace Areas**

Employers must recognize that immigration enforcement agents may lawfully enter areas of the workplace that are open to the general public without a warrant or prior authorization. Examples of public areas include retail sales floors, restaurant dining rooms, or reception areas accessible from the street without restriction. However, spaces not open to the public, such as back offices, employee-only corridors, storage rooms, or other restricted areas, are considered nonpublic. Under California's Immigrant Worker Protection Act, agents may only enter these nonpublic areas if they present a valid judicial warrant, obtain consent from an employee, or face exigent circumstances, such as an imminent threat to safety. Absent one of these legal bases, agents have no authority to access nonpublic spaces, and employers should ensure employees understand the importance of verifying proper documentation before allowing entry.

**Distinguishing Judicial Warrants From Administrative Warrants**

Employers should also understand the critical distinction between judicial and administrative warrants when evaluating an agent's authority to enter nonpublic areas or access records. Judicial warrants are issued by a federal or state judge upon a finding of probable cause and will clearly display the issuing court's name at the top. These warrants grant agents the legal authority to enter specified nonpublic areas or seize designated records. In contrast, administrative warrants, including forms such as ICE Form I-200 (Warrant for Arrest of Alien) or Form I-205 (Warrant of Removal/Deportation), are signed by immigration officers—not judges—and do not authorize entry into nonpublic areas and do not grant authority to search private areas or records without the employer's voluntary consent.
Employers should carefully review any warrant presented, confirm its validity, and consult legal counsel if there are questions regarding the document's scope or sufficiency.

**Prohibitions On Reverification Of Employment Eligibility**

Assembly Bill 450 prohibits employers from reverifying the employment eligibility of current employees at times or in ways not required by federal law. Employers may only conduct reverification when it is consistent with Section 274a.2(b)(1)(vii) of Title 8 of the Code of Federal Regulations—such as when an employee's work authorization document is expiring or when the employer has knowledge, as defined under federal law, that an employee is unauthorized to work. Employers may also remind employees of upcoming reverification deadlines or correct missing or incomplete I-9 forms as permitted by law**.** (Labor Code §§ 1019.2, 1019.4.)

**Special Considerations for Healthcare Providers and Public Agencies**

Healthcare employers must exercise heightened caution if immigration enforcement agents request information about patients, as unauthorized disclosures could violate the Health Insurance Portability and Accountability Act and related privacy regulations. Even confirming whether an individual is receiving treatment may constitute a prohibited disclosure under federal law. Public agencies, including municipal or state employers, should carefully evaluate whether their workplaces, or portions thereof, are deemed public spaces—where agents may enter without a warrant—or nonpublic areas that remain protected under California's Immigrant Worker Protection Act. Given these complexities, employers in healthcare and public sectors should develop tailored protocols addressing both immigration enforcement scenarios and industry-specific confidentiality obligations.

**Practical Recommendations: Building a Comprehensive Response Plan**

Preparedness is essential for ensuring workplaces can navigate an ICE visit smoothly, legally, and in compliance with California law. The following measures may assist employers in developing effective protocols:

*Mark and Restrict Nonpublic Areas*
Clearly identify nonpublic areas with signage such as "Employees Only" or "Authorized Personnel Only," and, where feasible, secure these areas with keycard systems or locked doors to reinforce access restrictions.

*Develop Clear Communication Protocols*
Establish a detailed chain of notification for potential ICE encounters, ensuring that management, human resources, and legal advisors are informed promptly and consistently.

*Appoint and Train a Response Team*
Designate specific personnel, ideally managers or senior staff, responsible for interacting with immigration agents. This team should be trained to:

- Request and differentiate judicial and administrative warrants;
- Avoid granting inadvertent consent or providing voluntary permission to agents to freely enter all parts of the facility;
- Avoid engaging in or facilitating actions that single out or separate employees based on perceived immigration status, nationality, or other protected characteristics;
- Immediately notify legal counsel; and
- Document and maintain all relevant details, including agents' names, badge numbers, any documents or items seized. Keep detailed records of interactions with immigration agents, including copies of all notices, warrants, subpoenas received, and any related communications.

*Educate Employees on Their Rights*
Train all employees so they understand that they:

- Have the right to remain silent and are not required to answer questions about their immigration status or personal details;
- Should stay calm and not run during an enforcement action (ICE agents have authority to pursue individuals suspected of immigration violations);
- May refuse to sign any documents without first consulting an attorney;
- Should avoid providing false information to agents; and
- Can request to speak with an attorney before responding to questions or providing documents;
- Keep in mind that statements made to agents can be used as evidence; any employee taken into custody should promptly request legal counsel and a "show cause hearing" to contest the basis for detention.

*Post Required Notices Promptly*
Comply with the notice requirements set forth in Labor Code § 90.2 and the official guidance from the California

Labor Commissioner and Attorney General by posting notices to employees within the required timeframes following a Notice of Inspection or receipt of inspection results.

For additional insights on preparing for workplace immigration enforcement, see Kripa Upadhyay's articles "What to Do in the Event of an Immigration Raid or I-9 Audit" and "Workplace Raids: A Guide for Employers on Your Rights and Responsibilities", which offer practical guidance for employers facing ICE inspections and audits.

**Conclusion**

Employers in California must balance compliance with federal immigration law and obligations under state law, including California's Immigrant Worker Protection Act's strict requirements concerning access to employment records. To safeguard both the organization and its workforce, employers should ensure that policies and protocols are in place well before any enforcement action occurs. This includes clearly defining procedures for handling requests from immigration authorities, training managers and employees on their rights and responsibilities, and consulting legal counsel.

*This update is intended for informational purposes only and does not constitute legal advice.* Employers navigating the complexities of workplace immigration enforcement issues or related employment compliance concerns are encouraged to seek advice from experienced legal counsel.

Buchalter has a dedicated Immigration Task Force that provides comprehensive support to employers navigating ICE inspections, audits, and other enforcement activities. For assistance on any employment-related matters regarding non-U.S. citizens or individuals who do not hold permanent resident status, please contact Kripa Upadhyay, Joshua Mizrahi, or Rochelle Calderon. For guidance on responding to worksite raids and protecting both employer and employee rights, contact Joshua Robbins and Sherry Hartell Haus. For representation during an I-9 audit, conducting an independent I-9 audit, or developing a comprehensive immigration compliance plan, contact Kripa Upadhyay.

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