



## IMMIGRATION AND CUSTOMS ENFORCEMENT RAIDS

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Employers can take key steps before, during, and after an Immigration and Customs Enforcement (ICE) raid to reduce business risks and ensure compliance with federal hiring and record-keeping laws. As the primary agency enforcing workplace immigration laws, ICE has the authority to audit or raid businesses to verify employment eligibility. Understanding your rights and implementing best practices can help protect your business and ensure compliance with federal regulations.

### **Before a Raid: Risk Mitigation Best Practices**

Reducing the risk of an immigration raid and ensuring compliance with federal immigration laws is essential not only to avoid legal consequences, but also to foster a fair and lawful hiring process. For an employer to be placed in the best position possible, it should regularly engage in the following practices:

- Ensure full compliance with the requirements of the Form I-9 by maintaining accurate records and ensuring all employees have correctly completed the form. Important points: Only accept and review new hires' original documents, not photocopies. Carefully review I-9 related documents and verify questionable social security numbers. Note: valid social security cards have only nine digits, not numbers beginning with 000, 8, or 9, and do not have a 00 group or 0000 series.
- Consider voluntarily enrolling in E-Verify, a system that verifies the work authorization status of employees through government databases. It may also serve as an added layer of protection against hiring unauthorized workers.
- Audit hiring records to ensure that all documents are up-to-date, complete, and accurate.
- Provide training for HR teams and managers on immigration laws, proper documentation, and potential consequences of violating these regulations. Training staff helps ensure that everyone understands the importance of compliance and knows how to handle an ICE audit should it occur.
- Maintain clear workplace policies regarding the hiring of employees, immigration status, and how to handle visits from immigration authorities and avoid potential penalties. Additionally, designate a trained ICE point of contact (e.g., HR Manager).

- Conduct regular employee training sessions to explain their legal rights, including the right to remain silent, the right to refuse a search without a valid warrant, and the right to consult an attorney, if detained.

### **During a Raid: Warrant Process**

During an immigration raid, ICE typically operates without providing advance notice to employers. The agency may present a warrant, issued by a United States Judge or a Magistrate Judge, which grants ICE permission to search the employer's facilities, review documents, and interview employees. ICE may sometimes approach an employer without a warrant. In such cases, ICE should seek the employer's consent to search the premises. Without the employer's consent, the agency generally cannot proceed with a search unless they possess a valid warrant.

The warrant serves as the legal basis for the raid and dictates the specifics of the investigation. A valid ICE warrant must meet certain legal requirements including being issued by a U.S. Judge or Magistrate and signed by a judicial officer, listing the individuals that ICE intends to interview, describing the items or documents that it seeks to inspect, and must be executed within ten (10) days of issuance. Employers who resist a valid warrant could face legal repercussions, such as charges for contempt of court.

### **During a Raid: Employer Considerations**

First and foremost, remain calm and polite with ICE investigators. Ensure that all interactions between management and ICE agents are calm and respectful to avoid escalating the situation. Encourage employees to remain calm and follow the training they've received on their rights. Accompany the ICE officers during their search, and compile detailed notes regarding their actions, including the substance of their conversations with employees and their treatment of and demeanor toward employees.

### **Handling Search and Warrants**

Do not consent to a search if ICE does not present a warrant. Politely ask the government to return after it obtains a valid warrant. Before allowing access, read the warrant carefully, ask for a copy for the business' records, and then monitor and observe whether the government complies with the warrant's parameters. Businesses may direct agents to wait in a designated public area while the business' designated point of contact or legal counsel reviews the warrant. Be sure to record key details of the raid, including names and badge numbers of ICE agents, type of warrant presented, any actions taken by the agents (e.g., searches, arrests), or instances of threats, mistreatment, or misconduct.

### **Verifying Investigator Identity**

Ask the investigator to disclose his credentials. If an employer is suspicious of their identity, call the agency to confirm it. Retain the investigator's name, telephone number, and other contact information they provide.

### Privacy and Employee Information

Do not provide information about employees, such as schedules, immigration status, or personal documents, unless required by the warrant. It is also recommended that employers refrain from assisting ICE agents in identifying or sorting employees based on nationality, language, or immigration status. Note: Take photographs or video recordings without interfering with law enforcement activities, and request to photocopy any records that the government seizes.

### Employee Rights and Legal Support

Assist detained employees in contacting legal counsel and ensure they understand their right to a private phone call. Do not retaliate against employees for exercising their rights or for being targeted in an ICE raid. Retaliatory actions may result in additional legal consequences.

### **After a Raid: Next Steps**

After an ICE raid, it's crucial for employers to seek legal counsel to help assess the situation, ensure legal compliance, and provide support for affected employees. Legal counsel can provide guidance on several critical issues, including those listed below, and advise if additional steps may be necessary.

*Warrant Validity:* was the warrant valid, did ICE act within their legal scope, and follow proper procedures. If there were any deviations, such as agents overstepping their authority or improperly executing the raid, legal counsel can advise on the appropriate actions to take.

*Impact on the Business:* legal counsel can assist in determining if there is a potential business impact, including any violations of employee rights or issues related to business operations during the raid that need addressed.

*Compliance and Risk Mitigation:* how to ensure future compliance with immigration laws and how to minimize the risk of future ICE investigations or audits. They will also help the employer understand any legal implications that could arise from the raid, such as the need to correct any records or practices in the future to avoid further penalties.

*Filing Complaints:* If the employer believes that ICE agents acted improperly or exceeded their legal authority during the raid, such as using excessive force, unlawfully detaining employees, or violating any rights, the employer can file complaints or take legal action against ICE.

These complaints can be filed with the office of the Inspector General (OIG), local or federal courts, or DHS Civil Rights and Civil Liberties Office. Filing such complaints helps ensure accountability and transparency in how ICE conducts its operations and can deter future misconduct. Legal counsel will be instrumental in guiding the employer through this process and ensuring any complaint is filed appropriately.

After a raid, employers will want to provide emotional support and counseling resources to affected employees.

An ICE raid can be a traumatic and stressful experience for employees, especially those who may feel personally targeted, uncertain about their immigration status, or worried about retaliation. Employers should take immediate steps to support the emotional well-being of their employees:

*Provide Counseling Services:* Employers should offer access to counseling and mental health resources, such as an Employee Assistance Program (EAP), which can help employees cope with the stress and emotional fallout from the raid.

*Legal Aid:* Offering employees access to legal assistance can help them navigate any immigration issues they may face, such as understanding their rights, addressing potential deportation risks, or applying for work permits.

*Communication:* Clear and open communication with employees after the raid is essential. Employers should assure them that their rights are a priority and ensure that they are not discriminated against or retaliated against for cooperating with ICE. Maintaining trust in the workplace is pivotal for employee morale.

Employers who demonstrate their commitment to protecting the well-being of their employees and foster a supportive workplace minimizes risks and strengthen their business. Legal counsel plays a key role in guiding the process and is well versed in ICE related events.

Turner Padget will continue to monitor developments and provide updates as they become available. For more information on ICE-related matters affecting your business, contact our legal team.

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