

WORKSITE ENFORCEMENT SERIES: **PREPARING FOR THE ICE RAID**

Immigration agents may come to your workplace for a Form I-9 Audit, a raid or to detain specific employees. Preparation is crucial when it comes to an immigration worksite enforcement action. Even if you carefully verify the work authorization of all your employees, ICE and Homeland Security Investigations (HSI), a federal law enforcement agency within the Department of Homeland Security (DHS), may still investigate your workplace based on a lead, complaint or other factors. If you do not have a worksite enforcement action plan in place, you should consult with a qualified immigration attorney to ensure you are prepared in the event of an unannounced federal law enforcement visit. In the meantime, if ICE or HSI arrives at your workplace, be aware of the following:

SCOPE OF OPERATIONS:

Immigration officers are permitted to enter any **public** areas of your workplace but must have a valid search warrant or your consent to enter non-public areas.

- ❑ A valid warrant must be signed and dated by a judge. It will include a timeframe within which the search must be conducted, a description of the premises to be searched, and a list of items to be searched for and seized (e.g., payroll records, employee identification documents, Forms I-9, SSA correspondence, etc.).
- ❑ An agent will serve the search warrant on a receptionist or company representative and alert other agents to enter.
- ❑ Your company can accept the warrant but not consent to the search. If you do not consent to the search, the search will proceed, but you can later challenge it if there are grounds to do so.
- ❑ Depending on the type of business, ICE/HSI may demand that equipment be shut down and that no one leave the premises without permission.
- ❑ ICE/HSI may move employees into a contained area for questioning.
- ❑ While some agents question employees, others will likely execute the search and seizure of items listed in the warrant

EMPLOYEES' RIGHTS:

Employees have the right to remain silent and the right to an attorney. Ask if your employees are free to leave. If they are not free to leave, they have a right to an attorney. While you should not instruct your employees to refuse to speak to federal agents, they also have the right to remain silent and do not need to answer any questions.

Your employees do not need to answer questions about their immigration status, where they were born, or how they entered the United States. They may exercise their right to remain silent and may ask to speak to an attorney.

- ❑ If federal agents try to determine your employees' immigration status by asking them to stand in groups according to status, they do not have to move, or they can move to an area that is not designated for a particular group.
- ❑ They may also refuse to show identity documents that disclose their country of nationality or citizenship.
- ❑ If your employees are detained or taken into custody, ensure that you assign someone to contact their family, and pay them any money owed for services.

EMPLOYER RIGHTS AND RESPONSIBILITIES >

EMPLOYER RIGHTS AND RESPONSIBILITIES:

Employers have certain rights and responsibilities during a worksite enforcement action:

- ❑ If a search warrant is presented, examine it to ensure it is actually a “Judicial Warrant” signed by the court, that it is being served within the permitted timeframe, and that the search is within the scope of the warrant – the area to be searched and the items to be seized. Be sure to send a copy of the warrant to your attorney.
- ❑ Write down the name of the supervising agent and the name of the U.S. attorney assigned to the case.
- ❑ Have at least one company representative follow each agent around the facility. The employee may take notes or videotape the officer. Note any items seized and

ask if copies can be made before they are taken. If the agent does not allow you to make copies, you can obtain copies later.
- ❑ If agents presented a valid search warrant and want access to locked facilities, unlock them.
- ❑ Request reasonable accommodations as necessary. If agents insist on seizing a document that is vital to your operation, explain why it is vital and ask for permission to photocopy it before the original is seized. Reasonable requests are usually granted.
- ❑ Do not block or interfere with federal agent activities. Note that you are not required to give the agents access to non-public areas if they did not present a valid search warrant.
- ❑ Object to a search outside the scope of the warrant. Do not engage in a debate or argument with the agent about the scope of the warrant. Simply state your objection to the agent and make note of it.
- ❑ Protect privileged materials.
 - If agents wish to examine documents designated as attorney-client privileged material (such as letters or memoranda to or from counsel), inform them that they are privileged and request that attorney-client documents not be inspected by the agents until you are able to speak to your attorney.
 - If agents insist on seizing such documents, you cannot prevent them from doing so. If such documents are seized, try to record in your notes exactly which documents were taken by the agents.
- ❑ Ask for a copy of the list of items seized during the search. The agents are required to provide an inventory to you.
- ❑ Company representatives should not give any statements to federal agents or allow themselves to be interrogated before consulting with an attorney.
- ❑ You may inform employees that they may choose whether or not to talk with federal agents, but do **not** direct them to refuse to speak to agents when questioned.
- ❑ Do **not** hide employees or assist them in leaving the premises without permission. Do not provide false or misleading information, falsely deny the presence of named employees, or shred or otherwise obscure documents.
- ❑ Do not forget the health and welfare of your employees. Enforcement actions can sometimes last for hours. If an employee requires medication or medical attention, or if employees have children who need to be picked up from school, communicate these concerns to the federal agents



POST-ENFORCEMENT ACTION ISSUES >

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The investigation does not end after the federal agents leave the premises. ICE/HSI and the U.S. Attorney will thoroughly review the items seized during the enforcement action, and the investigation, including undercover surveillance, can continue for many months.

ICE/HSI is not the only law enforcement agency that can visit or conduct an enforcement action against your worksite. The Department of Labor may also conduct an investigation, and in some jurisdictions, state and local police can act on behalf of HSI in an operation.

HOW EMPLOYERS CAN PREPARE FOR ICE/HSI ACTIONS

Create a Written Rapid Response Plan Ahead of Time

- ✓ Talk to other businesses or business associations. Ask what they are doing to prepare.
- ✓ Make a plan that works for you.
- ✓ Practice – just like a fire drill. You will be more prepared if you know what to say and do.
- ✓ Connect with immigration response networks in your area. They provide support with family, legal, financial and media concerns if immigration agents come to your business.

Train Your Staff to NOT TALK to ICE Agents

- ✓ Train all workers to NOT allow ICE agents to enter your workplace.
- ✓ A worker can say, “I can’t give you permission to enter. You must speak with my employer.”
- ✓ Train all workers to NOT interact with ICE agents. If ICE agents have questions or requests, workers should say nothing, or say, “*You are not allowed to enter. Talk to my employer.*”

Know Your Rights!

Employers have rights when ICE goes to a business. ICE agents do not always have a right to enter your business, stop or arrest your workers, or take documents.

Work with a community or legal group to arrange a “Know Your Rights” training for you and your staff and pay your staff for the time they spend in training.

WHAT EMPLOYERS SHOULD DO WHEN ICE ARRIVES

For Public Areas:

- Anyone – including ICE agents – can enter *public* areas of your business without permission.
- Public areas include a dining area in a restaurant, parking lot, lobby or waiting area.
- Being in a public area does NOT give ICE the authority to **stop, question** or **arrest** just anyone.
- No one can enter a *private* area of your business without your permission or a **judicial warrant**.

TIP: To show that some areas are private, mark them with a “Private” sign, keep the doors closed or locked, and have a policy that visitors and the public cannot enter those areas without permission.

For Private Areas

- Immigration agents can enter a private area ONLY IF they have a *judicial warrant*.
- A judicial warrant must be **signed by a judge** and say “**U.S. District Court**” or a **State Court** at the top.
- Without a judicial warrant, ICE agents need YOUR permission to enter private areas of your business.
- If ICE agents try to enter a private area, you should say: “*This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?*”
- If ICE agents tell you that they have a judicial warrant, ask for a copy and read it.
- Sometimes, ICE agents try to use an *administrative warrant* to enter. But an administrative warrant does NOT allow agents to enter private areas without your permission. **Administrative warrants** are *not* from a court. They say “Department of Homeland Security” and are on Forms I-200 or I-205.

Action Issues continued >

DURING THE RAID

- **Stay calm!** Ask your workers to stay calm, too. Do not run to the exits. This will make things worse because ICE agents can say people who are running are likely violating immigration laws.
- When ICE shows you an administrative warrant with an employee's name on it:
- You do **NOT** have to say if that employee is working on that day or not.
- You do **NOT** have to take the ICE agents to the employee named on the warrant (even if he or she is at work at the time).
- Do NOT help ICE agents sort people by their immigration status or the country they are from.
- Watch the agents and see if they are complying with what's written in the warrant.
- If you or an employee is willing, you should video or record what the ICE agents do at your workplace. You may be able to prove the agents violated your rights or your workers' rights.

What if ICE Agents Try to Stop, Question, Detain or Arrest a Worker?

- ICE agents may try to stop, question or even arrest a worker without the proper authority.
- The best way for workers to protect their rights is to **stay silent and ask for an attorney.**
- Workers do not have to hand over any IDs or papers to ICE. All workers have this right.
- Any information that workers give to ICE can be used against them later.

AFTER THE RAID

Write or record these things after ICE leaves:

- How many ICE agents were present (inside and outside)?
- How were the agents dressed? How were they armed?
- Did the agents make you or your workers believe you could not move or leave?
- Did the agents mistreat anyone? If yes, how?
- Notify the employees' union.
- If ICE arrests any of your workers, ask the ICE agents where they are being taken. This information will help the worker's family and lawyer find the person.

The Immigration team at Harris Beach Murtha regularly monitors rapid developments in immigration law impacting employers and employees and will provide updates as soon as they occur. We recommend contacting a member of our team to discuss how these developments may impact you, your employees or your family members. Find more information about our [Immigration Practice Group](https://www.harrisbeachmurtha.com) on our website:

[www.HARRISBEACHMURTHA.COM](https://www.harrisbeachmurtha.com)

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