

THOUGHT LEADERSHIP

ARTICLES

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ICE at the Worksite: What Should Employers Do

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In 2003, Congress created the Department of Homeland Security (DHS). Within the DHS is the interior enforcement arm, U.S. Immigration and Customs Enforcement (ICE), that enforces federal laws governing border control, customs, trade, and immigration with 400 ICE offices in the U.S. ICE identifies, apprehends, and detains removable foreign nationals and removes them from the United States.

The first Trump administration set a goal of conducting 12,000–15,000 Form I-9 inspections (audits) for Fiscal Year 2020—a goal that was stymied by the COVID pandemic. President Trump promised during the 2024 campaign to have the “largest deportation program in American history.” The first week of the second Trump administration signaled that ICE will be engaging in aggressive workplace compliance investigations and targeted enforcement actions, or raids, in furtherance of these goals.

ICE’s presence at the workplace can be discomforting and disruptive. Although ICE agents are not police officers, their uniforms may say “Police” or “Federal Agent,” and local law enforcement may accompany them. As a result, employers should take proactive measures to protect their businesses and prepare for potential ICE inspections or raids.

Before ICE arrives: proactive measures

1. Minimize the risk through compliance

ICE raids or just ICE agents present at the workplace can impede business, harm employee morale, scare off customers, and damage public perception. Some raids are a result of a tip provided to ICE from an employee or member of the public. Some, however, are triggered by Form I-9 audits that indicate

that the employer has employed, even unknowingly, those who were not authorized to work or be in the United States. Therefore, employers should ensure they are fully complying with their Form I-9 obligations by doing the following:

Confirm that all employees have properly completed Form I-9s on file: Cross-check payroll records to ensure compliance.

Conduct regular audits: Periodically review I-9 records to identify and correct discrepancies and as a refresher of best practices. Internal audits demonstrate that an employer takes this requirement seriously and in good faith and can reduce penalties if a government audit finds violations. Consider involving outside legal counsel for thorough audits.

Train staff: Conduct regular I-9 training of HR staff, managers, and other team members who complete I-9 forms. Training should include identifying documentation issues and handling situations involving potential unauthorized workers.

Consider using E-Verify: While not mandatory for all employers, utilizing the E-Verify system, like regular internal audits, can also show an employer's due diligence in verifying work eligibility and may help reduce penalties in case of violations.

2. Prepare staff and offices

News reports of ICE raids create anxiety among employers and their staff. Employers can ease this by having policies and practices related to interactions with law enforcement. Employers should:

Take a unified approach: Policies and practices should apply to interactions with all law enforcement, regardless of whether it is the local police, ICE, or another federal agency.

Have a communications plan: There should be an internal communications plan to control the flow of information and lessen any disruption to operations in these situations.

Have a response team: Ideally, there should be designated representatives who are knowledgeable about an employer's rights and responsibilities with respect to immigration enforcement activities and any changes to government policy and regulations. The designated representatives serve as the point of contact until legal counsel is contacted.

Create private spaces: Just as with any member of the public, ICE agents can enter public areas of your business, such as lobbies, dining areas in restaurants, and parking lots. Even without a warrant,

they can question people in those public spaces. Everyone, however, has the right to remain silent, and they can be advised of this right. Therefore, the written policy should identify which areas within the worksites are closed to the public. Install signage at the entrance to private areas and limit access to these areas to employees and invited visitors.

Train staff: Employees, from the office manager to the custodians, should be trained on what to do if law enforcement are present, even during off-hours. Staff should also be advised of relevant legal principles, such as the right to remain silent and the “in plain sight” principle. For instance, they should know to:

Notify the authorized representatives as soon as ICE agents arrive.

Assert their 5th Amendment right to remain silent and answer questions.

Inform agents that they do not have the authority to answer any of the agent’s questions. This will avoid any action on the part of your employees that law enforcement could interpret as consent.

Keep agents out of non-public spaces except to have them wait in an office or conference room.

Maintain privacy by limiting speaking within earshot of ICE agents and covering private documents.

Employers should consider holding practice drills just as you do fire drills, especially if you believe ICE may target your worksite. Your team will be more prepared and confident if they know what to say and do.

3. Anticipate workforce disruptions

As ICE increases their activity, fear of raids may lead to absenteeism or work stoppages. Employers should be aware that certain collective actions, such as protests over workplace conditions, may be protected under the National Labor Relations Act (NLRA), even for unauthorized workers. Employers should train managers to avoid threatening discipline for legally protected actions and instead engage with staff in a supportive, neutral manner. Open communication channels to address employee concerns and minimize disruptions. If you have collective bargaining agreements (CBAs), review them for any requirements related to immigration issues or mandatory notifications to employees.

When ICE is on-site: immediate actions

1. Stay calm and professional

Employer’s staff should remain calm and professional throughout these interactions. Employees should not run from or be confrontational with ICE agents. However, if agents are there without a

warrant and start harassing employees or customers or interfering with your business's operations, you can ask the agents to leave as you would with any other disruptive individuals.

2. Limit cooperation without a warrant

While it is prudent for employers to not be seen as uncooperative with law enforcement, they must be mindful that ICE and other law enforcement must still go through a judicial process to access an employee or their information. Employers should balance respecting their employees' confidentiality and limiting disruption within the workplace with maintaining a good rapport with ICE.

Under the 5th Amendment of the U.S. Constitution, all persons have a right to stay silent. Your employees do not have to answer an ICE agent's questions, hand over their identification documents, or otherwise cooperate without a judicial warrant. Of course, they should not be purposefully evasive or belligerent. Employees should professionally and calmly tell the agent that they are not authorized to provide the agent with information or access to non-public areas, but that, following protocol, a designated representative has been alerted. The employee should then direct the ICE agent to an office or conference room away from the lobby or reception area where their presence might be disruptive and cause concern among customers, employees, and other visitors.

If ICE presents a warrant, an authorized representative should review the document to ensure it is valid, signed by a judge or magistrate, bears the address of the premises to be searched, provides a time period in which the warrant may be executed, and describes the scope of a search.

A judicial warrant is issued by a judicial court and is signed by a judge or magistrate. These warrants allow ICE to conduct any search, seizure, or arrest as authorized in the warrant, including employee files. Judicial warrants must be complied with, and there are serious consequences for refusing to comply.

An administrative warrant, issued by DHS/ICE and typically on Forms I-200 or I-205, does not require compliance, and employers cannot be punished for refusing to comply. An administrative warrant does not authorize a search, though, in certain circumstances, it may authorize the agent to make a seizure or arrest.

A judicial subpoena is a formal written order signed by a judge directed at a person to compel their testimony as a witness or to produce evidence under a penalty for failure to comply. These can be challenged in court.

An administrative subpoena is issued by a federal agency. There is no immediate requirement to comply, and penalties for failure to comply may occur only if the agency takes the additional steps to enforce the subpoena in federal district court.

If presented with an administrative warrant, employers do not have to tell the ICE agent if the employee named in the warrant is working on that day, nor do you have to take the ICE agents to the employee. Employers do not have to assist ICE beyond what is required by the judicial warrant. For instance, employers cannot be required to, nor should they, sort employees by their immigration status or nationality.

An ICE agent may state that their action is required to avoid imminent harm or risk. The facility should evaluate the circumstances and balance multiple factors. It can decide to cooperate even without a warrant.

Even without a warrant, ICE agents can look at anything in “plain view.” That means that papers and computer screens they can see unaided in public areas can be inspected. Employee should cover documents that are in “plain view.” In addition, audible information can be used if overheard with “unassisted” ears. Given that sound carries, this means even if there is a conversation in a private area, if an ICE agent can hear it with their unassisted ears from a public area, it is considered in “plain view.” If what the ICE agent sees or hears in “plain view” gives them “probable cause” that unlawful activity is occurring, has occurred, or will occur, they would be allowed to search the relevant private area and seize items found there.

3. Document everything

Employees should document the details of the interaction, including the names of the ICE agents and their badge numbers. Employees should ask for the ICE agents’ business cards or contact information.

During an enforcement action permitted by judicial warrant, watch ICE agents and see if they are complying with what is written in the warrant. Record and monitor activities but avoid anything that could be construed as interference or obstruction.

In addition, employees should not hide other employees or destroy documents, and no one should provide false information. Remind employees that they do not have to speak to or answer ICE agents’ questions.

When the ICE agents leave, the event should be memorialized in writing and include such information as how many ICE agents were present (inside and outside), if local law enforcement accompanied them, and how the agents were dressed. It is also important to note if agents tried to skirt the law—if they made you or your employees believe you could not move or leave, if they mistreated anyone, etc.

Should ICE (or any law enforcement) arrest any of your employees, ask the agents where the employee is being taken. This information will help their family and attorney find them.

In the aftermath of a raid, employers should consider issuing a public statement and consulting a crisis communications team to mitigate any damage to the employer's reputation.

What if it's "just" an I-9 audit

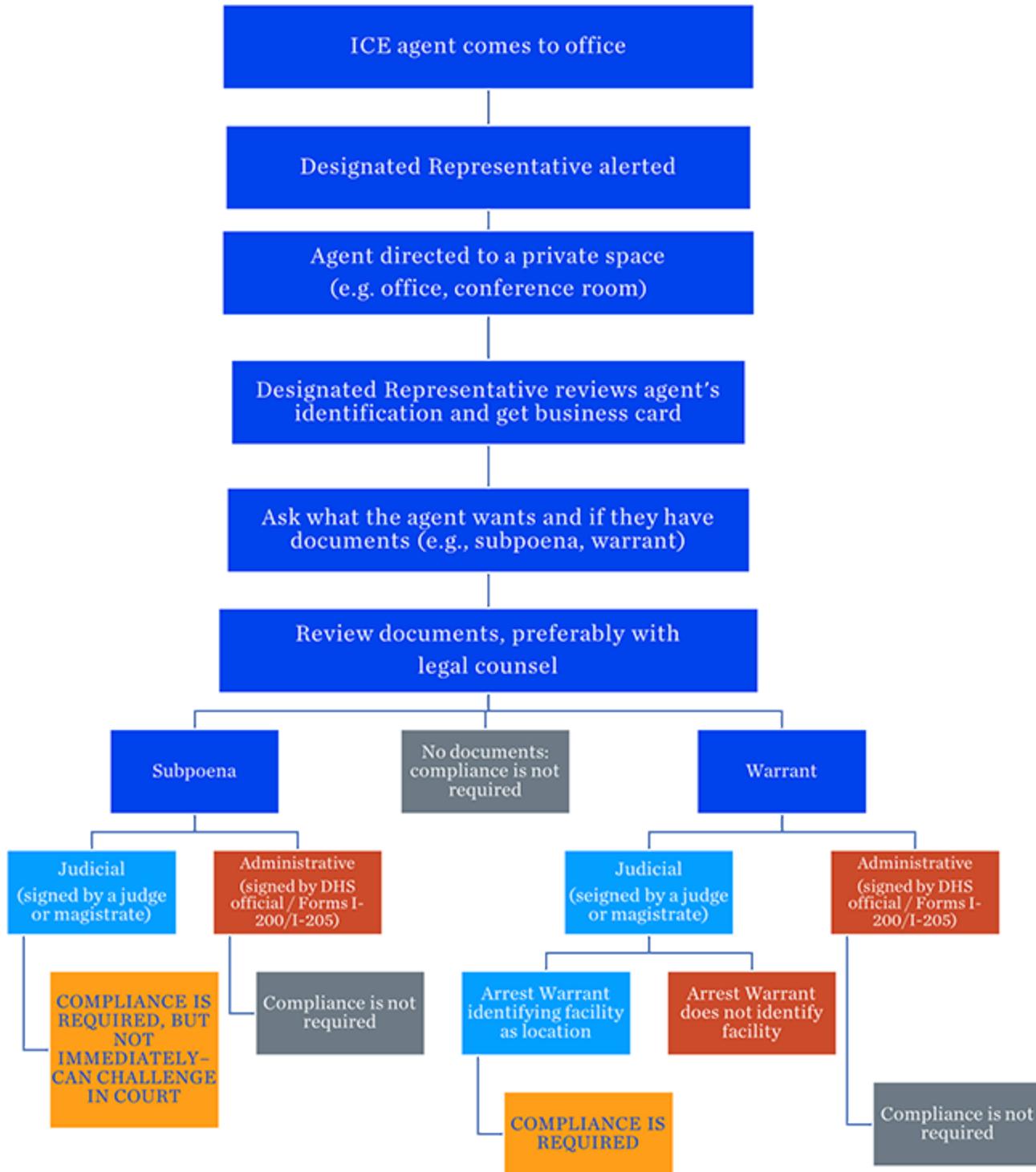
The most common reason for ICE agents coming to businesses is deliver a Notice of Inspection (NOI) requiring an employer to produce I-9 forms and additional records within three business days. Even if you have recently done an internal audit and know documents are in order, take the full three days and do not provide documents early. As is your right, do not sign anything or answer any questions before speaking with legal counsel. Legal counsel can assist in reviewing I-9 forms, correcting errors, and negotiating a short extension to produce the documents if needed. They can help minimize workplace disruptions by working with ICE to keep them away during those three days. Legal counsel can advise you of any requirements to notify employees or their union representative that you have received an I-9 NOI.

If, after reviewing the I-9 forms, ICE determines that some employees are not authorized to work, you will have 10 days to provide valid work authorization for these employees. Notify the affected employees of the audit findings and the deadline to provide valid work authorization documentation or have their employment terminated.

Key takeaways for employers

- 1. Proactive compliance:** Regular audits, staff training, and clear policies can minimize risks.
- 2. Employee rights:** Train staff to assert their rights calmly and professionally.
- 3. Legal support:** Consult legal counsel to navigate audits and enforcement actions.
- 4. Documentation:** Record all ICE interactions to protect your business and employees.

By implementing these strategies, employers can better manage the complexities of immigration enforcement while safeguarding their operations and workforce.



Husch Blackwell's Business Immigration and Global Mobility team offers a Resource Center with insights to help employers navigate the evolving immigration policy landscape.