

Trump Second Term: Legal Tracker

IMMEDIATE ACTION ITEM FOR ALL EMPLOYERS: PREPARE FOR AN ICE RAID

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Last week BCLP issued a client alert on the Trump Administration's immigration enforcement agenda. In response to requests from our clients for more information on this issue, we will be issuing a series of alerts on this topic. This week, we are addressing what to do when an agency arrives unannounced.

President Donald Trump and newly named "Border Czar" Tom Homan have been vocal about their plan to "run the biggest deportation operation this country's ever seen," including by targeting undocumented workers and the businesses that hire them. The administration has already begun to execute on that promise: the president has signed several immigration-related executive orders and employers around the country are seeing a dramatic uptick in unannounced workplace visits by Immigration & Customs Enforcement ("ICE"). In addition to proactively ensuring your hiring and I-9 practices are in compliance and ready for an audit, employers should also have a plan in place for how to respond in the event of a workplace visit (including a potential raid) from ICE.

When law enforcement agents arrive at your workplace, they may ask to meet with management, to review (or "audit") documents, and/or serve a subpoena or search warrant on the company or any employee. In some instances, agents may even surround the premises and seal off exits and routes of escape. Having a rapid response plan in place can help you and your employees remain calm and react in the best interest of the company. Employers should consider the following best practices when facing an ICE worksite visit:

1. Immediately call counsel (in-house or outside) and request that ICE agents wait if they ask to conduct any search or interviews until counsel has arrived. If counsel cannot be on site in a timely manner and the ICE agents insist on moving forward with a search immediately, consider keeping counsel on a live phone call/FaceTime to assist in guiding personnel on site and interfacing with ICE agents in real-time. ICE should not demand to interview anyone without counsel present.
2. Determine the purpose of the visit by requesting the agents' identification and any warrant, subpoena, or notice of inspection. A notice of inspection is slightly less immediate – it will require you to provide ICE with copies of all requested records within three days. A warrant or subpoena, on the other hand, can authorize immediate action including an immediate search.

3. Collect the names and badge numbers of all agents who come on site.
4. Carefully review any warrant for validity (signed and dated by a judge), and, if it is, review the scope of the judicial warrant (e.g., does it apply only to certain areas of the premises and/or for a limited period of time). If counsel is not yet on site, immediately send a copy of the warrant(s) to counsel.
5. Regardless of whether ICE provides a valid judicial warrant, you should always verbally express non-consent to any search. However, never physically interfere with or obstruct the agents while they conduct a search. Expressing non-consent preserves the ability to contest ICE's actions later on.
6. Carefully monitor any search and verbally object to ICE agents searching any area outside the scope of the judicial warrant or interviewing any management employee in a position to speak on behalf of the company. Do not, however, interfere with their search or interviews of employees.
7. If the ICE agents do not have a judicial warrant, they may search public areas within the workplace, but may not search private areas of the workplace without consent. Again, express non-consent to ICE's search of both public and private areas. If agents attempt to search the private areas of the workplace, verbally object to the search, but do not physically interfere or obstruct the agents' actions.
8. Accompany the agents at all times and document all interactions with them, including any non-consent (and those present as witnesses), areas searched, documents seized, people interviewed, and any requests made by the ICE agents. Take notes and, if able to do so without interfering, video. Attempt to replicate any photographs taken by agents during the search.
9. Provide accurate and truthful information to the agents; but do not volunteer information, including employees' immigration status or nationality. Do not attempt to hide or destroy documents or to hide or help employees leave the premises during any raid.
10. Inventory any documents taken, identifying the source of the documents (i.e., "from the desk or Mr. X"). Request that ICE provide a list (or "inventory") of all materials taken during any visit. Try to provide copies instead of originals. If the agent(s) refuses, request to copy all documents produced before they are removed.

BCLP has a team of knowledgeable lawyers who can help employers develop the recommended policies, practices, and plans, including the development of a rapid response plan, to be prepared for responding to a government visit. Our team also has experience assessing risks from both a criminal and employment law perspective, as well as responding to audits, assisting when raids occur, managing workforce disruptions and absences in a compliant way, and managing public relations after a raid or audit.

If you or your organization would like more information, please contact any attorney in our Immigration Preparedness and Rapid Response Team.

RELATED PRACTICE AREAS

- Employment & Labor

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