

Immigration-Related Workplace Enforcement Initiatives and Practical Compliance Advice

Recent changes in immigration enforcement under the current administration have raised concerns for agriculture employers. AmericanHort offers the following guidance regarding enforcement actions by Immigration and Customs Enforcement (ICE), the agency within the Department of Homeland Security (DHS) responsible for immigration-related workplace compliance. Employers should be aware of the following as of January 30, 2025:

Employers should be prepared for potential ICE audits and immigration raids. Adhering to I-9 regulations and immigration laws is critical. Failure to comply with ICE, DHS, or Homeland Security investigations can result in serious consequences for employers: businesses may face orders to cease hiring and could be subject to civil and criminal fines and penalties. AmericanHort, in collaboration with several resources, outlines the following steps for compliance and response.

Proactive Steps for Employers

1. Self-audit by regularly reviewing I-9 Forms, record-keeping practices, and employee verification processes.
2. Ensure staff understand I-9 compliance and designate a management representative to handle ICE inquiries.
3. Always ask for ICE agents' identification and determine the level of cooperation required.
4. Use the government's E-Verify tool to verify employee work authorization.
5. Ensure that employee tax withholdings and payments are correctly processed.
6. Establish relationships with qualified immigration attorneys for guidance.
7. Employers should cross-check ICE's list of unauthorized workers with new applicants' Social Security numbers and work authorization documents. ICE has prosecuted employers who unknowingly rehired workers with invalid work authorization.

If ICE Requests an I-9 Audit

- ICE must provide a three-day notice before an I-9 inspection.
- While ICE does not need a subpoena for routine audits, it can request I-9 Forms and related employee lists.
- Employers should make copies of all documents submitted to ICE.
- Take reasonable steps to verify employment status if discrepancies are found.

Handling Errors Before an Audit

- Missing or incomplete I-9 Forms should be corrected immediately without backdating.
- Employers have 10 business days to correct technical errors.
- Compare ICE's list of unauthorized workers with future job applicants to prevent rehiring individuals with invalid work authorization.

When ICE Conducts a Search or Seizure

- Employers should stay calm and ask for a signed warrant from a federal or state judge before allowing entry. If the ICE agent does not have one, the employer can ask them to return with a proper warrant. Only court-issued warrants, not immigration orders, are legally valid.
- A search warrant does not automatically imply criminal charges, but employers should consult legal counsel before making statements to ICE.
- Consult legal counsel before complying with a warrant.
- Employers have the right to request a copy of the search warrant and an inventory of seized documents. If critical records (e.g., personnel files) are taken, employers can request copies from ICE.
- Always request written notice from ICE if it claims certain employees have invalid work authorization documents. Relying on verbal communication may lead to discrimination claims.

Emergency Planning and Response

- Distribute "Know Your Rights" cards to employees in English and Spanish and train them to remain calm and cooperative and avoid carrying false documents.
- Assign trained supervisors or legal liaisons to handle ICE interactions, including bilingual staff for communication.
- Only provide ICE access to records or premises specified in the warrant, and do not consent to additional searches.
- Establish relationships with local immigration advocacy groups and legal teams for support.

During a Search: What to do

- Employers and employees have the right to remain silent and consult with legal counsel.
- Employers should accompany ICE agents during authorized searches and document all interactions.

Post-Visit Actions

- After an ICE visit, prepare a report documenting the agents' actions, items seized, and interactions with employees.
- Ensure detained employees have access to legal counsel and their families are supported.
- Work with legal counsel to address compliance issues and mitigate the risk of fines or penalties.

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