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***Memo and FAQs re immigration enforcement***

**Update on President Trump's ICE Encounters**

Shortly after taking office, President Trump signed several executive orders cracking down on illegal immigration, targeting mainly criminals who are document challenged. However, there have been many collateral arrests due to the lack of cooperation from sanctuary cities and states. The Department of Homeland Security also announced it is ending a policy which restricted ICE from making arrests at or near locations including places of worship, hospitals, and schools. The administration has stated they will first be targeting large metropolitan cities.

**What does this mean for employers?**

Employers should be prepared for CBP and/or ICE to show up unannounced to interview both employers and employees. The reports of CBP showing up at worksites is largely surrounding human and drug trafficking enforcement within 100 miles of a land border and 50 miles of a water border. Because much of CBP activity is being conducted incident to human and drug trafficking, if they appear at a worksite they are likely there with a warrant.

ICE has authority to show up at most worksites unannounced with or without a warrant in most cases. If ICE has a warrant, you should ensure it is a judicial warrant and signed by an actual judge and not an immigration order. If they show up at a worksite without a warrant, their entry to the worksite can be restricted to public places, ensure that the worksite is clearly marked differentiating between places open to the general public and places only open to employees or invited guests.

**Preparing workers and records for an encounter with ICE**

All employers should have in place a clear plan in the event ICE makes an appearance. Employers should have a point person designated to work with ICE officers and every worker should know how to reach the individual tasked with this role. This person should accompany ICE officers through the worksite public locations, and if they have a warrant through the locations the warrant grants entry.

In the event of an ICE encounter, it is important for workers to understand they have the right to remain silent and are not required to answer questions posed by agents. Workers should be trained in advance on how to respond if they are approached by an ICE agent and should be advised not run in the event an ICE encounter occurs. Running will give ICE probable cause to not only arrest but enter any areas not covered by a warrant or enter areas when a warrant is lacking. Workers have the right to remain silent regardless of immigration status and a right to

Speak to an attorney before answering any questions. Employers should familiarize themselves with the plan in place and practice with workers like they would a fire drill.

Workers are not required to present documents to agents. However, if they do decide to provide documentation it should be accurate and up to date. If workers need time to obtain such documentation, they should be granted time off from work to do so. Any information or documentation given to ICE can be used against the worker and it is always best to remain silent and contact legal counsel. Employees on a visa, and all employees who are concerned with interactions with ICE, should have proof of lawful status, whether that is a copy of their passport or picture on their phone.

### **I-9 Compliance and SSA mismatch letters**

A form I-9 is required to be kept on every employee for three years after the worker is hired or after one year of separation from the employer, whichever is later. It is best practice to conduct internal I-9 audits to ensure all information on file is accurate, concise and meets the DHS Handbook for Employers, M-274: <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/table-of-contents>. If any changes have been made during an internal audit, record the date in which the changes were made and initial next to the changes. Now is the time to do internal audits.

In previous administrations DHS and the Social Security Administration (“SSA”) would send “no-match” letters to employers who provide social security information through form W-2 that do not match the number and name SSA has in their records. These letters do not mean on the face that the employee has provided false information, there are many reasons the information could not match other than immigration status. Employers who receive these letters are cautioned by DHS, DOJ, and SSA to not immediately take adverse employment action against the employee identified in the letter. However, the letter outlines a long course of action that employers should take to include: verifying the information the employer has is correct and was not transposed; informing the employee of the letter and asking them to verify the information the employer has is correct; if all information is correct the employee should be directed to contact SSA within a reasonable period of time and correct any issues, then follow up with the employer when completed; if the employee cannot correct this information within a certain period of time, the employer can then terminate the employee or face potential risk of knowingly employing someone who is not authorized to work.

### **What does an employer do if they do encounter an ICE raid?**

The first thing employers should do is remain calm and ask the agent for a signed warrant by a federal or state judge. If an employer is provided with anything other than a signed warrant from a federal or state judge, they are within their rights to ask the agent to come back with a signed warrant before granting entry. In the past, agents have been known to pass off immigration orders as signed warrants, these administrative warrants are from “Department of Homeland Security” and do not carry the weight of a warrant from a Federal or State court judge. If an employer is provided a proper warrant, it is recommended the employer comply with the request.

If the employer accepts the warrant but does not provide consent to the search, it will still occur, but the employer has the right to challenge the warrant if there are grounds to do so.

Entry must be granted only to the areas specified on the warrant. Employers should read the warrant in its entirety and watch to ensure the agents do not have entry to areas or seize items not included in the warrant. If the agents seize something crucial to the operation of the business, employers are encouraged to work with the agents as they generally honor reasonable requests. If possible, the employer should have one representative follow each agent around the facility to video and take detailed notes so if there are violations by the agent there is sufficient evidence. Detailed notes should be taken documenting all items and documents that are seized. At the end of the raid, ask the agent to provide you with a list of items seized by ICE agents.

Depending on the nature of the business, operations may be halted, and employees required to remain onsite. In some cases, workers will be secluded to different areas. Workers do not need to answer questions pertaining to their place of birth, how they entered the United States, or their immigration status. In the event an ICE agent requests workers to stand in groups according to their status, they have the right to stand still. ICE agents may attempt to question employers and other employees about the shifts of or whereabouts of a particular worker, neither the employer nor worker are required to provide such information.

### **What does an employer do if ICE arrests one of their workers?**

Employers should ask the agent where the worker is being taken as that will be pertinent information to both legal counsel and the workers family. The employer should ensure the worker is paid any outstanding money owed.

### **What does the employer do after an ICE raid?**

After the ICE agents leave the worksite, the U.S. attorney and ICE will review their findings, the entire process could go on for many months, but we are hearing the process is speeding up. Employers should memorialize the following after agents leave:

- The number of ICE agents that entered the property and those that remained outside.
- Were they armed or brandishing weapons?
- How were they dressed? We hear reports of uniforms saying police, federal law enforcement, immigration, and others; which could be telling of the agencies involved in the raid.
- Did they mistreat anyone?
- Did they make you or the workers feel like they couldn't leave? This could be a factor in fighting any arrest or detention.

### **What does the worker do if they have an encounter with ICE?**

If the worker has valid immigration documentation, they are encouraged to provide the documents when asked. As a best practice, workers should always keep copies or pictures of

their documentation on them and ensure their documents are both accurate and current. If a worker is questioned by an ICE agent, it is important they know their rights:

- They have the right to remain silent and are not required by law to answer any questions or provide documentation.
- It is highly advised that they do not lie about their immigration status and are encouraged to reach out to legal counsel immediately before answering any questions, they have a right to do this.
- Just like Law and Order, any information provided to ICE will be used against them.

It cannot be stressed enough if the worker has valid immigration documentation, they should provide that information when prompted. Ensure they are always carrying or have photos/copies of their documentation with them.

### **What does the worker do if ICE comes to their residence?**

Advice from around the industry is the worker to not let ICE into their home or go outside unless the agent can show a signed warrant by a federal or state judge. As mentioned, ICE has been known to produce a warrant that has not been signed by a federal or state judge and is therefore invalid, employers should show workers an example of an actual warrant. Best practices from around the industry are to have them slip the warrant under the door or hold it up to the window. If the warrant is not signed, the worker should respond by informing the ICE officer they do not want to talk at this time.

### **What does the worker do if ICE comes to their work?**

The worker has the right to remain silent and seek legal representation before answering any questions. They should remain polite and calm and in under no circumstances run from the agent. Again, running creates probable cause and allows what would otherwise be an unlawful search and seizure lawful.