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Is Your Workplace Prepared for a Raid by ICE?



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The new administration is making headlines with its intense focus on immigration-related matters. Recent Executive Orders have notably expanded the ability of the Department of Homeland Security and its affiliated agencies to investigate, apprehend and detain illegal aliens in the United States – including enhanced authorization for state and local law enforcement to perform the functions of federal immigration officers in the United States. Is your workplace prepared if the U.S. Immigration and Customs Enforcement agency (ICE) conducts a raid?

ICE was formed in 2003 as part of the formation of the Department of Homeland Security. According to its website, ICE has more than 20,000 law enforcement and support personnel in more than 400 offices in the United States and around the world. The agency has an annual budget of approximately \$8 billion. With increased I-9 audits and unannounced workplace raids by ICE and other law enforcement agencies making news, it is critical for employers to know their rights and responsibilities and to formulate both preventive policies and a responsive action plan in the event of an ICE raid.

For employers, ICE has a worksite enforcement program that investigates both administrative and criminal violations of businesses and their employees here and overseas. ICE generally conducts two types of worksite investigations: (1) an audit of an employer's I-9 practices and (2) a worksite enforcement action, commonly referred to as a raid, of employers suspected of employing undocumented workers.

For an I-9 audit, ICE will often arrive at a worksite unannounced and demand to see the employer's I-9 forms. Employers have three days to comply with the demand for the I-9 forms. In a raid, ICE will arrive unannounced, generally with a search warrant issued by a federal or state court, to seize documents or to make arrests. There is no three-day period to comply.

What can an employer do to prepare for ICE's worksite enforcement program? Employers should implement a variety of proactive, preventive measures:

- Conduct I-9 self-audits to ensure compliance with legal requirements on confirming an individual's identity and authorization to work in the United States.
- Provide ongoing staff training on the completion of I-9 forms.
- Take timely and compliant corrective actions on I-9 and related employment issues.
- Formulate and follow an appropriate document retention policy (e.g., segregating I-9s from personnel files, maintaining I-9s only during mandatory retention periods, etc.).
- Consider signing up to use the E-Verify program to verify the employment authorization of applicants for employment.
- Self-audit I-9 processes (and E-Verify processes, if you are an E-Verify employer) to ensure consistent and accurate procedures.
- If you use contractors, leased workers or temporary staff, review vendor contracts to ensure that the vendor is responsible for providing contractors who are legally authorized to work in the United States and that the vendor is primarily obligated to

ensure compliance with immigration laws.

- Advise employees of sources of information on their rights in the event of an ICE raid (for example, the employee's right to remain silent and their right to an attorney, particularly if they cannot leave the worksite).

Along with strong preventive policies, employers should also develop and maintain a Responsive Action Plan if ICE or another law enforcement agency shows up at your worksite. Such a Plan should include:

- Direction to promptly call the company's attorney. The company receptionist should tell the ICE agents, "It is our company's policy to call our attorney if law enforcement shows up, and I'm doing that now."
- Ask for and review the "warrant" that ICE presents. Employers only have to allow inspections if a warrant has been (1) issued by a court of law (rather than an agency) and (2) is signed by a judge.
- Write down the names of each agent and the name of the U.S. attorney assigned to the case.
- Designate a point person within the human resources or legal departments to handle dealings with ICE and staff.
- Assign company staff to shadow or follow each agent around the facility. • Unless otherwise prohibited by state law, video or record what the ICE agents do at the workplace.
- Take notes on any items seized and request that copies be made before they are taken. If ICE does not agree, document the refusal to do so, including the specific documents at issue.
- If ICE tries to enter areas or seize documents not covered by the warrant, assert an objection. However, do not refuse entry or seizure.
- Try protecting privileged materials (such as attorney-client documents) by explaining that they are privileged and asking that they not be inspected by the agents until you are able to speak to your attorney. However, do not refuse to allow them to take such documents.
- Request permission to photocopy critical documents before they are seized.
- Communicate employee welfare needs and request accommodations, such as for medical needs, plans for picking up children from school, etc.
- If any employees are arrested, ask where they are being taken and contact the employee's family following the raid.
- Create and maintain a record of the event after ICE leaves, such as the number of agents, how they identified themselves to the company, whether they were armed, whether they mistreated any employees, etc.

Things NOT to do in the event of a Raid:

- Do NOT allow ICE agents to roam the facility without a company representative.
- Do NOT provide any false or misleading information or documents.
- Do NOT falsely deny the presence of named employees.
- Do NOT shred any documents.
- Do NOT impede or interfere with ICE activities or agents.
- Do NOT grant the agents access to non-public areas unless they present a valid search warrant.
- Do NOT engage in an argument with the agents about the scope of a warrant. Instead, simply present your objection to the agent and make note of it.
- Do NOT direct employees to refuse to speak to agents when questioned. Instead, you may simply inform employees that they may choose whether or not to talk with the agent.
- Do NOT provide legal advice to employees or others who are at the worksite.
- Do NOT hide employees or assist them in leaving the premises.
- Do NOT help ICE agents sort people by their immigration status or the country they are from.

- Do NOT make any statements to agents (all staff should be trained not to make statements). Instead, simply state that your company policy is to have your attorney communicate directly with agents.

ICE and the U.S. Attorney's Office will review seized items and will likely continue an investigation for months after they leave the worksite. During this time, the employer should work with legal counsel to respond to all agency requests. Also during this time, the employer may begin to implement its plan to mitigate any business interruption if there has been a reduction in staff.

Please do not hesitate to contact David Michael, chair of Gould & Ratner's [Human Resources and Employment Law Practice](#), to discuss any of these issues.