

Preparing for ICE

Immigration and Customs Enforcement (ICE) is a federal law enforcement agency responsible for enforcing immigration laws. Its duties include ensuring that employers verify their employees' work authorization by completing Form I-9 and overseeing the removal of individuals not authorized to reside in the United States. Additionally, other federal agencies may request I-9 forms as part of their investigations.

The Fraud Detection and National Security (FDNS) division of U.S. Citizenship and Immigration Services (USCIS) may conduct compliance investigations related to work authorization, including H-1B and L-1 visa statuses. In certain circumstances, state law enforcement agencies may also play a role in immigration enforcement.

The following outline provides key considerations for preparing a worksite in the event of an immigration law enforcement encounter.

What you can do now:

I. Enact a policy of response to law enforcement encounters

- a. Compliance with all applicable laws and regulations
- b. Communication response guidelines
 - i. Who is notified, including management and attorneys?
 - ii. Who speaks for the entity?
 - iii. What can and cannot be shared on social media?
 - iv. Questions and public comments should run through internal approval, such as a manager, administrator or media officer

II. Create a communication plan

- a. Is communication needed now to address constituent concerns, including those of employees?
- b. How will communication be handled if a law enforcement action occurs?
- c. Do you have emergency contacts for all employees?
- d. Engage communication professionals

III. Train staff to set expectations

- a. Receptionist/frontline workers – who to call, what documentation to ask for, whether to record interaction?
- b. Management on site – who to inform, what documentation to ask for, whether to record interaction?
- c. Difference between a basic (informal) request, judicial warrant, administrative warrant and subpoena.
- d. Aspects of a warrant – does it name a specific location or person?
- e. Realities of a law enforcement search:
 - i. Reasonable expectation of privacy analysis

PLEASE NOTE:
Specifics of each situation matter a great deal in both what you can do to prepare and how you would respond to law enforcement. We highly recommend consulting legal counsel to provide advice helpful to your situation. The legality of certain actions depends on the facts involved. The following is not a substitute for specific legal advice.

1. Objecting to the search
2. Avoiding obstruction or harboring
- ii. Specifics of what information can and cannot be released appropriate for your worksite and location (State laws interact and may vary or be stricter than federal law)
 1. Unprotected information
 2. Private information (PII) (may be released with a legally compliant warrant or subpoena)
 3. Medical information (PHI) (HIPAA and other laws: may be released with a legally compliant warrant or subpoena)
 4. Mental health and treatment information (42 CFR Part 2 Confidentiality of Substance Use Disorder SAMHSA rules: only in certain situations will it be released even with a warrant). However, counsel should review the request before PHI is disclosed to determine whether compliance is mandatory or permissive or insufficient to support release of the information.
 5. Schools' student info (FERPA: may be released with a legally compliant warrant or subpoena).
 - a. Schools participating in the Student and Exchange Visitor Program (SEVP) must disclose records of F and J students per program considerations.
 - b. FAFSA information may be protected.
 - c. Certain records related to the administration of federal student aid programs must be disclosed to the Education Department.
 6. Temporary visa/status information (such as H-1B, O-1, L-1, etc.) is subject to disclosure to USCIS per the application process.
 7. Federal tax information is protected under privacy laws (may be released with a legally compliant warrant or subpoena).

IV. I-9 Audit

- a. Self-audit v. legal assistance v. other assistance (no attorney/client privilege)
- b. Understand who is in the management team to maintain privilege
- c. If unauthorized workers are identified, consider the ramifications and whether an investigation is needed.
- d. Terminate unauthorized workers. If necessary to continue business, a termination plan may be needed.
- e. Check that personnel files and I-9 files are separate or separate them.

V. Consider information collection practices and general knowledge of immigration status

- a. Employers must complete I-9s for all employees hired after Nov. 6, 1986, which form includes PII and immigration status.
- b. In most other situations, collection of immigration status is not required and should not be collected if it is not required.
- c. A general understanding of the immigration status of customers, clients or other constituents may be helpful in assessing risk. Mixed status families are common, for example.

VI. Schools should consider cooperation agreements and the existing practices of their campus police and other law enforcement agencies. State and local laws should also be considered.

What to do if law enforcement visits:

I. If it is one or two agents/targeted request

- a. Ask for credentials/business card and make a copy.
- b. Invited them to an area separate from the workforce/customers/clients.
- c. Follow the communication plan/call attorney.
- d. Request documentation (warrant, subpoena).
- e. Cooperate as legally required; maintain composure.
- f. Politely refuse if a request is outside your authority.
- g. State if you do not consent to a search.
- h. You may invoke your right to counsel and to remain silent.
- i. You may inform employees that they have the right to counsel or to remain silent.
- j. Record (video) the event if legally appropriate (such as on private property).

k. DO NOT:

- i. Invite or consent to law enforcement into private spaces.
- ii. Instruct employees not to answer questions.
- iii. Hide employees or others.
- iv. Obstruct law enforcement physically.
- v. Answer questions outside the communication plan.

II. If it is a large “raid” team

- a. The same protocol applies, but it may be harder to execute.
- b. You have a right to call your attorney.
- c. You have a right to see the warrant or other documentation.
- d. You have a right to state that you do not consent to the search.
- e. You may record the action if legally appropriate (such as on private property)
- f. If employees, patients, parishioners or others are being detained, you (or your attorney) can:
 - i. Clarify if they are under arrest (if so, they must be read their rights; if not, they should not be detained).
 - ii. Notify law enforcement of medication or other health needs.
 - iii. Notify law enforcement of family considerations, such as children in school or daycare.
 - iv. Notify law enforcement of urgent business considerations such as products that will spoil or animals that need to be fed.
- g. Activate communication plan for internal and external stakeholders.
- h. Write down your recollection of the event as soon as possible.
- i. Track who is arrested or taken off-site and notify family/emergency contacts.
- j. Consider notifying community leaders and social services to assess needs as appropriate. However, individual patient information should not be released by a healthcare provider unless allowed under HIPAA.
- k. Consider notifying the consulate of the home country of any employees arrested or detained as they may be able to assist in obtaining legal representation.

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