

Business Immigration in the Trump Era, Part 1: Worksite Enforcement

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(Note: This is the first in a series of new immigration enforcement policies under the Donald Trump administration. The first is on worksite enforcement. Check back in upcoming weeks to read about more topics.)

As we reported previously, the Trump administration plans to add approximately 10,000 new immigration enforcement officers nationwide in the next few years-increasing the current staffing level by close to 60 percent. This dramatic jump in enforcement personnel makes clear that workplace enforcement will be one of the centerpieces of the Trump administration's immigration policies. Immigration-related audits and inspections can have a crippling effect on an employer's operations, and many employers are wondering what they should do to prepare.

Consider these issues:

Understand the types of audits that ICE conducts. The United States Bureau of Immigration and Customs Enforcement (ICE) audits employers in a number of different ways. An employer's appropriate response will depend upon the type of audit the agency is conducting. Most ICE audits concern an employer's compliance with the requirements of Form I-9, the government form that all employers must use to verify employees' identity and authorization to work legally in the United States. If ICE is conducting a **routine Form I-9 audit**, the employer is entitled by law to three days' advance notice. Those three days can prove crucial for organizing the Form I-9s and lessening the effect the audit has on overall operations. So employers shouldn't waive that right, even if the ICE officer presents a standard "Notice of Inspection." The employer's right to advance notice is less clear if ICE presents an **administrative subpoena**. In that situation, the employer should be able to at least negotiate some additional time for its legal counsel to attend the onsite audit, even if the employer doesn't get the full three days' notice. In rare cases, ICE will show up with a **search warrant** demanding immediate access to records and employees. When that occurs, employers don't have the right to delay, even to have their counsel on site during the inspection. Moreover, interfering with ICE's execution of a judicial search warrant can have serious consequences, like criminal prosecution for obstruction of justice.

Be prepared for an ICE audit or raid. Employers should be prepared in advance. At a minimum, employers should designate the employees who will interact with ICE in case of a raid or audit and train those employees on the appropriate way to interact with ICE. For example, these employees should be trained to read a judicial warrant to ensure that it's valid and that ICE's search complies with the scope authorized in the

warrant. Additionally, these employees should understand how to document what ICE inspects and removes during a raid. Employers should also consider engaging immigration counsel to assist with the preparations for ICE audits and raids. Immigration counsel also can assist employers in conducting "self-audits" to identify and fix Form I-9 compliance issues before ICE pays an unexpected visit.

Remember, it's not just ICE you should worry about. Although ICE raids grab the most headlines, other federal agencies also are authorized to conduct audits related to immigration issues. U.S. Citizenship and Immigration Services is authorized to conduct site visits to ensure employers are living up to representations made in petitions for work visas for foreign national employees. Similarly, the United States Department of Labor conducts routine audits regarding employer's representations in labor condition applications and labor certifications, documents required for filing certain temporary work visas and some applications for employment-based permanent residency. Likewise, the United States Department of Justice's Immigrant and Employee Rights Section is authorized to investigate allegations that employers have engaged in unfair documentary practices during the I-9 process, such as requiring that non-U.S. citizens present a permanent resident card, or "green card."

The attorneys in [Barley Snyder's Immigration Law Group](#) can assist employers in preparing for worksite enforcement actions and other immigration-related government investigations. Interested employers should [contact me](#) or [Silas Ruiz-Steele](#).

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