



2025 Louisville Annual Labor & Employment Seminar

October 30, 2025



SESSION 1

Safe At Work: Kentucky OSHA Updates and Managing Workplace Violence

October 30, 2025

Presented by



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John Rogers

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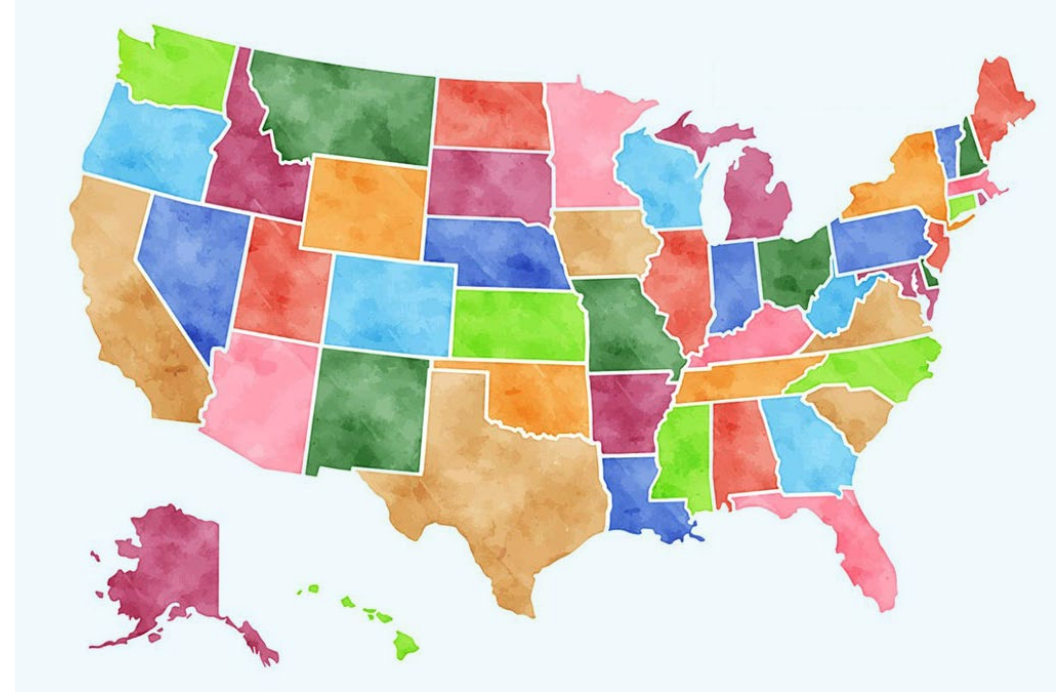
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What is a State Plan?



- Section 18 of the OSH Act of 1970 (29 U.S.C. § 667)
- Voluntary choice by states
- State government agencies – governed by state statutes with state specific regulations
- Which standards and the enforcement of standards must be at least as effective in providing safe and healthful employment
- Must be approved by OSHA based on criteria
- Receive funding from federal OSHA as well as the state
- Annual audit, Federal Annual Monitoring and Evaluation (FAME) which impacts federal funding



HB 398 Aligns Kentucky OSHA Regulations & Procedures with Federal OSHA



A key facet of HB 398 is that it aligns Kentucky OSHA with provisions enforced by federal OSHA. By doing so, Kentucky OSHA cannot adopt, promulgate, or enforce an occupational safety and health regulation that has not been promulgated by the United States Department of Labor, or that is more stringent than the corresponding federal provision enforced by the United States Department of Labor in Federal jurisdictions. Kentucky OSHA regulations that were more stringent or that did not exist in federal OSHA have been amended or withdrawn.



Standardizes Filing Deadlines



- Requires employees who believe they have been discharged or otherwise discriminated against in violation of Kentucky OSHA's anti-discrimination statute to file a complaint within 30 days after such violation occurs as opposed to "within a reasonable time," as previously provided.
- Requires Kentucky OSHA to issue a citation within six months after the occurrence of an alleged violation as opposed to "*shall be issued with reasonable promptness*," as formerly stated in 803 KAR 2:120.
- Requires a citation for an alleged discrimination violation be issued within six months from the occurrence of the alleged violation ensuring administrative actions for such alleged violations are not brought months and in some cases years after an alleged violation occurred.



Improves Complaint Process

- Improves the timeliness and legitimacy of written complaints.
- Limits written complaints to employees or representatives authorized by the employee.
- Limits the written complaint to alleged violations in the employee's workplace.
- Written complaints must contain the grounds for filing the complaint including the date the alleged violation occurred.
- The written complaint must be signed by the employee or their representative (option to remain confidential).
- Requires reasonable grounds to evidence a violation in the workplace.



Pauses Abatement Periods for Contested Citations



- Citation items are required to state when the cited employer must correct the alleged violation.
- If an employer is cited by Kentucky OSHA and chooses to contest the citation item in an administrative legal proceeding, HB 398 tolls the abatement period until the conclusion of the legal action.



Limits Time Period for Repeat Violation Citations



- HB 398 limits Kentucky OSHA from issuing a repeat citation more than three years from the final order date of the previous citation the repeat would be based on.
- The three-year window prevents businesses from being penalized for past infractions even after workplace conditions or staffing have changed.

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18 Apr: Good Friday.
1, 5 May: Early May Bank Hol.,
1, 25 Aug: August Bank Hol.,
y, 26 Dec: Boxing Day

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1 Jan: New Year's Day, 3 Apr: Good Friday,
6 Apr: Easter Monday, 4 May: Early May Bank Hol.,
25 May: Spring Bank Hol., 31 Aug: August Bank Hol.,
25 Dec: Christmas Day, 26 Dec: Boxing Day, 28 Dec: Substitute day

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2027

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Introduces “De Minimis” Violations

- HB 398 establishes de minimis violations in Kentucky.
- De minimis violations are minor infractions that do not impact employee safety and do not carry a penalty.
- Unlike federal OSHA, ad not previously recognized this category of violation and often imposed unnecessary \$5,000 or more fines for minor administrative errors.



Allows Employers to Recover Legal Costs

- Employers may appeal administrative decisions, but costs are a barrier to small employers exercising their rights.
- HB 398 provides an award of actual expenses and costs incurred by the employer in defending an action consistent with the Federal Equal Access to Justice Act available in federal OSHA litigation.
- This protection applies to businesses with:
 - A net worth not exceeding \$7 million, **and**
 - No more than 500 employees at the time of contest.



Workplace Violence



- The Occupational Safety and Health Administration (OSHA) defines workplace violence as “any act of physical violence, harassment, intimidation, or other threatening behavior that occurs at the work site.”
- Workplace violence can include a wide range of acts, including threats and verbal abuse, and is not limited to fatal incidents or even physical acts.



Who is at Risk of Workplace Violence?

According to OSHA, workers who are at higher risk of becoming victims of workplace violence include:

- workers who exchange money with the public;
- delivery and taxi/ride share drivers;
- healthcare professionals;
- social workers or care assistants;
- public service workers;
- customer service agents;
- law enforcement personnel; and
- others who may work alone or in small groups.



Workplace Violence by the Numbers

According to government data on fatal work injuries recorded in the U.S. in 2023 (the most recent reporting year), workplace fatalities due to violent acts:

- Totaled 740 (with more than 60% attributed to homicides);
- Highest among workers ages 25 to 34 (totaling 179, including 121 homicides and 58 suicides) compared to any other age group;
- Highest among retail and hospitality workers – violent acts accounted for 40% of all workplace fatalities in the retail industry and nearly 50% of all such deaths in the hospitality industry.



Workplace Violence Isn't Just Fatal



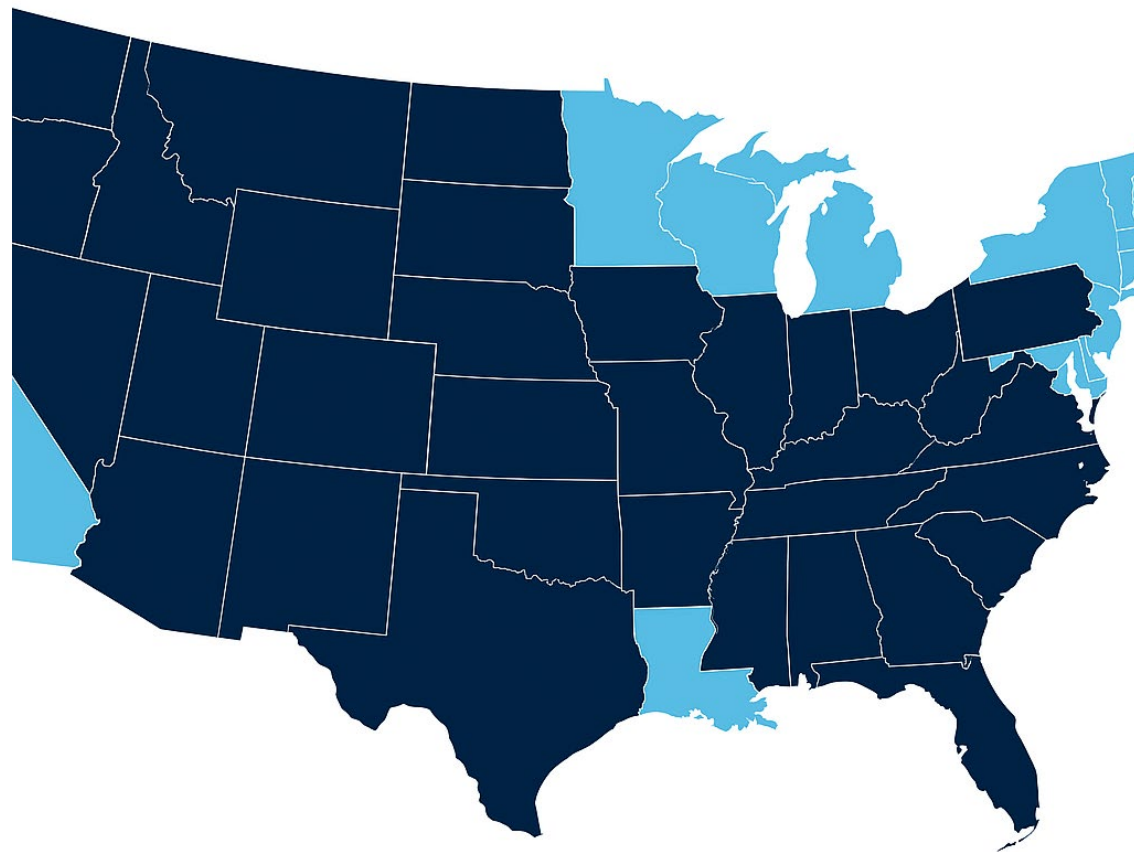
- For the BLS reporting period (2021-2022), there were 57,610 nonfatal cases of workplace violence requiring days away from work, job restrictions, or transfer.
- The rate of cases is nearly five times higher for the healthcare and social assistance sector; **and**
- 5 times higher for women compared to men (due in part to the high rate of women working in those sectors).



Non-OSHA Workplace Violence Laws in the States



- Many states including California, Connecticut, Illinois, Louisiana, Maine, Maryland, Minnesota, New Jersey, New York, Ohio, Oregon, Texas, and Washington have workplace violence laws on the books.
- Most are industry specific centering on healthcare facilities. Kentucky is no exception and has several non-OSHA specific healthcare related laws aimed at preventing workplace violence.



Kentucky Workplace Violence Laws

- Kentucky does not currently have a workplace violence OSHA law but does have workplace violence laws specific to the healthcare sector.
- In 2024 KRS 508.025 was amended making it a class D felony to assault a healthcare provider. This includes doctors, nurses, medical assistants, nursing home employees, or any other person who furnishes or assists in furnishing healthcare services.



Kentucky Workplace Violence Laws continued



- The Cabinet for Health and Family Services also has workplace violence laws specific to Kentucky's healthcare workers.
- KRS 216.705 requires health facilities to develop and execute a workplace safety assessment to identify the risk of workplace violence against healthcare workers. They must also create a workplace violence safety plan to address the risks identified in the safety assessment. Each facility must develop a plan.
- Starting January 1, 2024, KRS 216.707 required each facility provide violence prevention training to workers, volunteers, and contractors at least annually. Training must be conducted within 90 days of the health care workers initial hire date, unless considered a temporary employee, in which case it must occur before they begin performing work.
- The healthcare industry is ahead of the curve in addressing workplace violence, but OSHA covers all industries and may still investigate and issue citations for instances of workplace violence irrespective of these laws.

Federal Law and OSHA Guidance

- There are currently no specific OSHA standards addressing workplace violence. Federal OSHA has taken the position that the Occupational Safety and Health (OSH) Act's general duty clause requires employers to "take reasonable steps to prevent or abate a recognized violence hazard in the workplace."
- In 2019, the Occupational Safety and Health Review Commission (OSHRC), an independent federal agency that is not part of the Department of Labor or OSHA that hears and decides OSHA cases on appeal ruled for the first time that the general duty clause requires employers to protect employees from incidents of workplace violence.



OSHA's General Duty Clause

OSHA can still cite an employer even if a specific standard does not apply using the Section 5(a)(1) of the Act, also known as the General Duty Clause. OSHA must prove four elements when establishing a general duty clause violation:

1. The employer failed to keep the workplace free of a hazard to which employees were exposed;
2. The hazard was recognized;
3. The hazard was causing or was likely to cause death or serious physical harm; and
4. There was a feasible and useful method to correct the hazard.

2019 Integra Health Management, Inc.



- Integra Health Management, Inc., employed service coordinators to assist its clients, in receiving and maintaining proper medical care including patients with chronic medical conditions such as mental illness and avoiding treatment and noncompliance with prescribed medications.
- After several home visits with a client, an employee submitted reports to her supervisors where she identified disturbing behavior from the client, and that she was “uncomfortable” being alone with him.
- During a subsequent visit, the client attacked the employee and fatally stabbed her.



Integra Health Management, Inc. continued

- OSHA issued Integra a citation alleging a violation of the general duty clause, concluding that it exposed its employees “to the hazard of being physically assaulted by members with a history of violent behavior.”
- The OSHRC found that workplace violence is covered by the general duty clause where a “direct nexus” between the work being performed and the risk of workplace violence exists, such as interacting with those who have mental illness and violent backgrounds
- The OSHRC relied on evidence of training provided to the victim, the specific concerns noted in reports to her supervisors, and other threatening incidents previously told to Integra supervisors to conclude Integra recognized the hazard of “physical attack.”
- The OSHRC determined that practical methods of abatement could have significantly reduced the likelihood of workplace violence such as creating a workplace violence prevention program.

The 10th Circuit Weighs in on Workplace Violence



- The Tenth Circuit recently heard a workplace violence case on appeal from the OSHRC with the primary issue being who has the burden of proving economic feasibility of abatement.
- The case involved Cedar Springs Hospital Inc., a Colorado based psychiatric hospital, part of Universal Health Services Inc., which contested over \$15,000 in OSHA citations issued after staff reported being assaulted by patients.
- The Tenth Circuit appeared skeptical whether an employer needs to take on one or all of OSHA's suggested abatement measures and whether an administrative law judge's decision correctly placed the burden of proving economic feasibility for those measures on the employer or OSHA.
- Though a decision has not been rendered, the Tenth Circuit may shed light on what extent employers must implement protective measures given certain economic factors.



All Employers Need to Consider Strategies for Addressing Workplace Violence



- Establish a Zero-Tolerance Workplace Violence Policy
- Clearly communicate (in writing) and enforce a policy that prohibits any form of violence or threats. Train managers to recognize and address violations immediately.
- Identify and Evaluate Workplace Violence Hazards
- Are you in a higher-risk industry (such as healthcare, hospitality, or retail)? Regardless of your sector, are any factors present at your worksites that could potentially increase the risk for workplace violence? Certain workers could be more vulnerable, including those who work alone, at night, or workers who perform public safety or social welfare roles.



All Employers Need to Consider Strategies for Addressing Workplace Violence continued



- **Implement Security Measures for High-Risk Workers**

For example, hospital employers can equip front desk areas, cash handling locations, and entry points with surveillance cameras, panic buttons, and barriers to protect front-line employees in high-risk areas. They can also install panic buttons for housekeepers, room attendants, in-room dining servers, and others who need to enter guest rooms. Employers may implement the “buddy system” in certain situations to ensure workers aren’t alone with a high-risk individual.

- **Train Employees on Violence Prevention and De-Escalation**

Provide training on how to recognize warning signs, de-escalate conflicts, and safely exit dangerous situations. Ensure employees know when and how to seek help.

All Employers Need to Consider Strategies for Addressing Workplace Violence continued



- **Control Access & Ensure Adequate Lighting in All Areas**

Use keycards, guest logs, and secure entrances to limit unauthorized access. Restrict after-hours entry to prevent intrusions. Illuminate parking lots, hallways, kitchens, and back exits to deter criminal activity and enhance employee safety and comfort.

- **Develop a Workplace Violence Prevention Program**

Create a detailed plan that addresses potential scenarios, response protocols, and recovery support for affected employees. Make this a part of regular safety reviews and train employees on the program.

All Employers Need to Consider Strategies for Addressing Workplace Violence continued



- **Partner with Security Professionals or Law Enforcement**

Employ trained security staff or collaborate with local security firms or law enforcement to monitor entrances, patrol the premises, and respond to threats, especially during peak hours or events. These professionals are often eager to hold safety workshops and assist in response protocols.

- **Foster a Culture of Open Communication**

Encourage employees to report all suspicious behavior, escalating tensions, or security concerns without fear of retaliation. Respond swiftly and transparently to all reports.

Potential Liability Presented by Workplace Violence in Addition to OSHA Liability



Instances of workplace violence may present both legal and non-legal liability for employers in addition to OSHA liability.

- Potential criminal charges for employees and employers
- Workers' compensation claims
- Civil lawsuits
- Lost time and production during responses and investigations
- Reputational harm



How Can Fisher Phillips Help?



Kris Sacra, is an experienced firefighter, paramedic, and law enforcement officer who also serves as an adjunct professor at Texas State University and specializes in assisting clients of all sizes identify liabilities regarding workplace violence, develop and improve workplace violence prevention plans, and develop and conduct company specific workplace violence training.



QUESTIONS?



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AND THE WINNER IS



SESSION 2

When ICE Comes Knocking: What Every Employer Must Know

October 30, 2025

Presented by

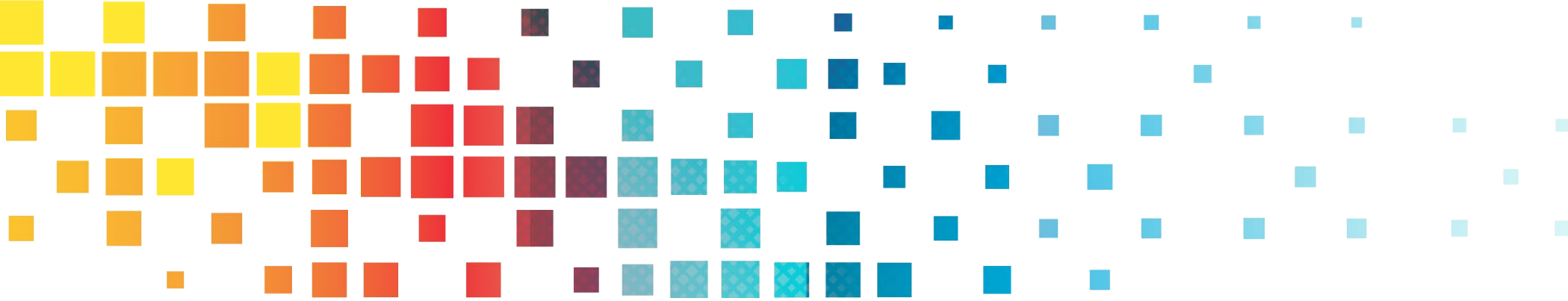


David Jones

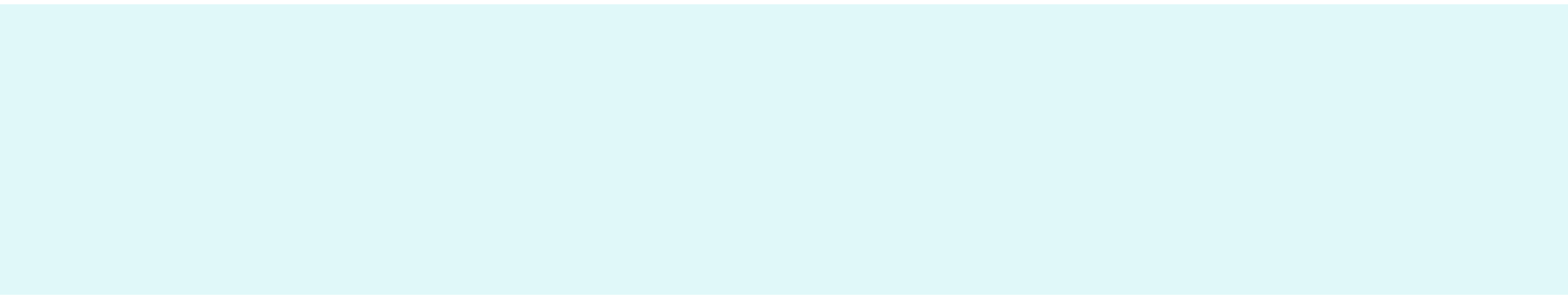
Regional Managing Partner / Memphis

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Current Events in Immigration





Kristi Noem, Secretary of Department of Homeland Security

- DHS has a budget of \$62 billion and over 260,000 employees.
- Trump's "Big Beautiful Bill" added \$32 billion to the budget for immigration agents and operations related to enforcement and deportation.



Pam Bondi, U.S. Attorney General

- DOJ has put new emphasis on prosecutions and investigations with a focus on states that have helped undocumented immigrants.
- After taking office, Bondi immediately issued several directives, including a commitment that the DOJ will "use all available criminal statutes to combat the flood of illegal immigration"



Tom Homan Named "Border Czar"

- Will oversee day-to-day operations and strategy on border security.
- Advocate for targeting undocumented workers and the businesses that hire them.
- "I will run the biggest deportation operation this country has ever seen."

Current Executive Orders and Recent Actions

Mass Deportation Initiatives:

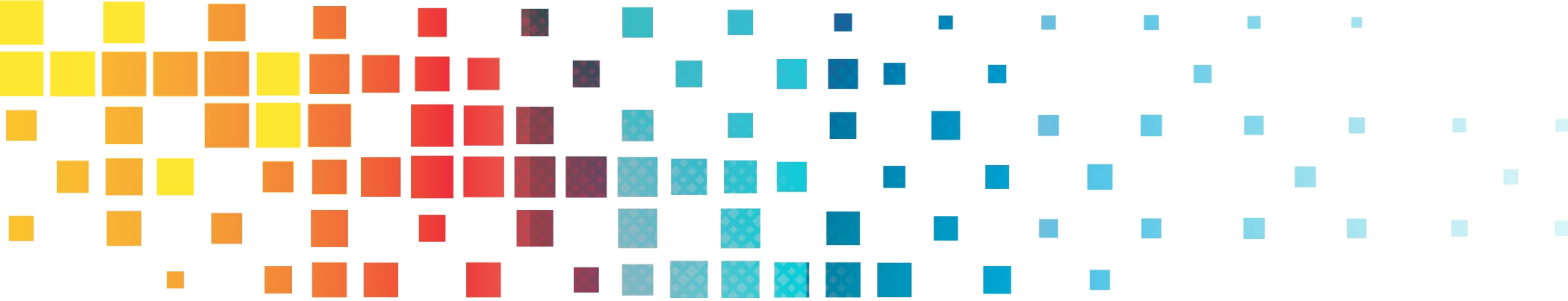
- Commencing with plans for large-scale deportations, aiming to remove millions of undocumented individuals from the country. Are building expansive detention facilities and deputizing local law enforcement to assist in federal immigration enforcement efforts. ICE has begun conducting raids and arrests on a wide scale. In February, Trump removed Acting ICE Director on the grounds that deportations were going too slowly.

Revocation of Parole:

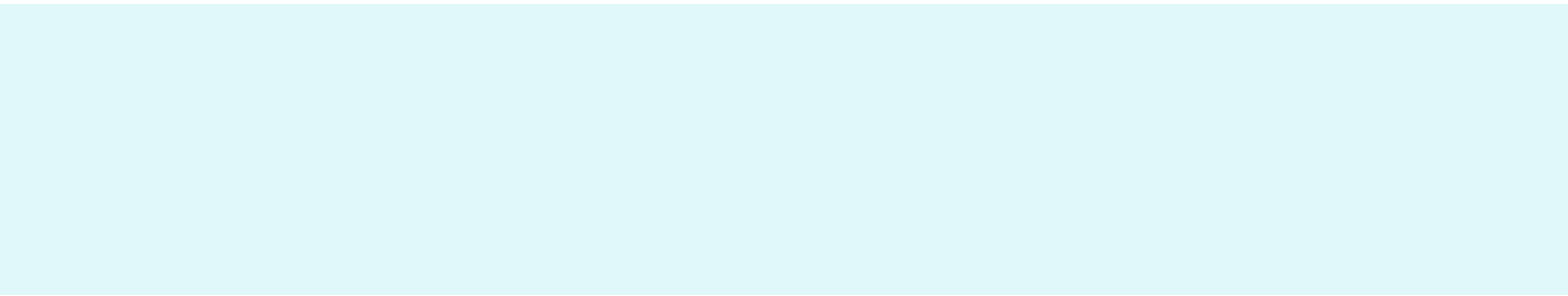
- The Trump administration terminated the CHNV (Cuba, Haiti, Nicaragua, and Venezuela) parole programs and revoked the parole status of anyone who entered under this program. Any beneficiaries who do not have another status are no longer eligible to work or remain in the U.S. Although challenged and temporarily enjoined, the Supreme Court has allowed the revocation to move forward.

Revocation of Temporary Protected Status (TPS):

- DHS revoked the latest TPS designation for approximately 600,000 Venezuelans residing in the United States as well as the latest TPS designation for Haiti by publication in the Federal Register. DHS also allowed TPS for Honduras and El Salvador to expire, among others.



Worksite Investigations



Why Would ICE be at the Worksite?

ICE may come to the worksite to:

- Start an I-9 audit (Document will be called “Notice of Inspection”);
- Workplace raid;
- Detain a specific person



DHS Raids – ICE vs. CBP

- ICE and CBP are both agencies of the Department of Homeland Security.
- CBP enforces customs and immigration law at and near the border.
- ICE enforces customs and immigration laws at the border as well as in the interior of the United States. ICE is typically the agency involved in worksite investigations (I-9 and related).
- ICE investigations target unauthorized employment as well as individuals who have committed criminal activity.
- CBP activity usually centers around individuals who committed criminal activity.

What Protections are Available?

Employers and employees have rights under law, regardless of status

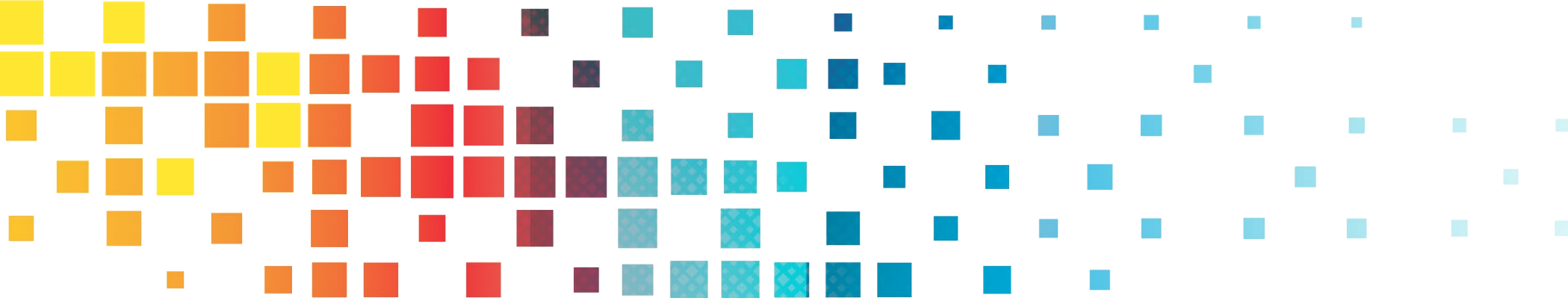
- 4th Amendment – protects people against unreasonable search and seizure of their home, person and belongings.
- 5th Amendment – right to remain silent.

Worksite Raids must be accompanied by a Judicial Warrant signed by a judge and give a specific scope of search and seizure.

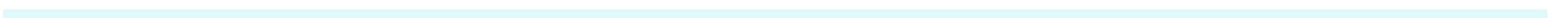
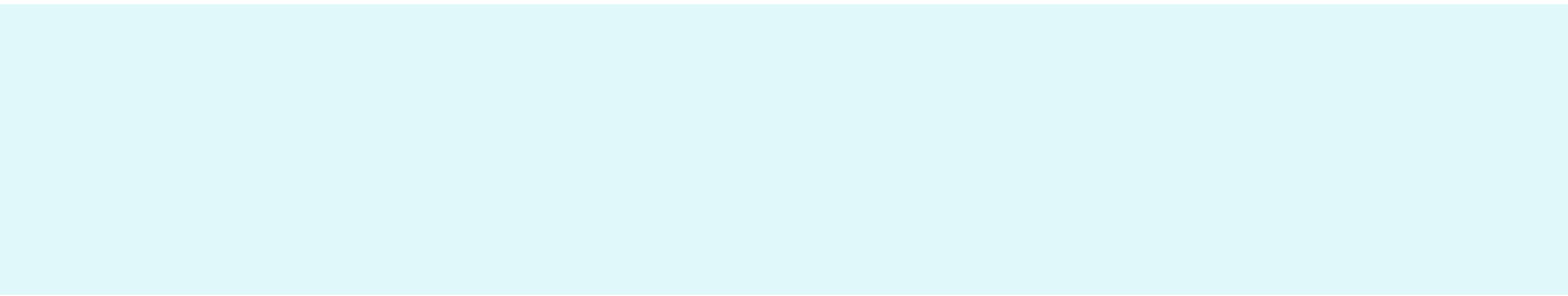
Home Searches must also be accompanied by a Judicial Warrant.

Warrants

- An administrative warrant authorizes an ICE agent to make an arrest or seizure, but not to search
- An ICE warrant does not authorize an ICE agent to enter a private space or home without consent



Best Practices



Preparation

Immigration Point Person

- Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.
- Ensure all employees are aware of who this person is and how to contact them.

Employee Awareness and Communication

- Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.
- Provide clear instructions on workplace rights and responsibilities in case of a raid.

Workplace Signage and Access Control

- Ensure proper signage is displayed on all private and non-public workspaces.
- Restrict unauthorized access to non-public areas unless legally required.

ICE or CBP Arrival

Handling ICE or CBP Agent Arrival

- Ask agents if they have a warrant.
- If no warrant is presented, deny access to employees, documents, and non-public areas.
- If a warrant is presented, carefully review its details.

Validating the Warrant

- Confirm it is a judicial warrant, issued by a federal court and signed by a judge.
- If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

Sample Warrants



Judicial Warrant

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,
Plaintiff,
v.
The PREMISES KNOWN AS,
Swift & Company, located at 1760
Highway 60 NE, Worthington,
Minnesota, and all its
appurtenances, parking areas,
and outdoor working areas
Defendant.

CIVIL NO. 04cm 457 JS/M

ORDER
FOR WARRANT FOR
ENTRY ON PREMISES TO
SEARCH FOR ALIENS
WHO ARE IN THE UNITED
STATES WITHOUT LEGAL
AUTHORITY

The United States of America, having filed an application to authorize officers of United States Immigration and Customs Enforcement to search the building on the premises described above to locate persons who are aliens in the United States without legal authority, and in support of the application, and the affidavit and memorandum of the affidavit that there is probable cause to believe that there are such persons on the business premises described above, and that the officers of the United States Immigration and Customs Enforcement are authorized to enter the building and search the premises described herein and to make such search as is necessary to locate aliens present in the United States illegally and counterfeit, altered, or imposter documents possessed and/or used by the aliens who are not lawfully entitled to reside within the United States and who are employed at present within Swift, Inc. (see Attachment B). In making this search, the agents of ICE are authorized to enter any locked room on the premises in order to locate persons who may be such aliens in the United States without legal authority and, if any such persons are found on the premises, to exercise their authority pursuant to section 267 of the Immigration and Nationality Act, 8 U.S.C. § 1357, to question them to determine whether they are such aliens and, if there is probable cause to believe they are such aliens, to arrest them.

IT IS FURTHER ORDERED that U.S. Immigration and Customs Enforcement shall conduct the entry and search during daylight hours with ten (10) days of the issuance of this warrant, and make its return to this Court with ten (10) days of the date the entry and search have been completed.

Dated: December 9, 2016

James S. Materson
JAMES S. MATERSON
United States Magistrate Judge

SIGNED BY A

Administrative Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____
Date: _____

To: Any Immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☒ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)
SDSO
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____, Colorado (Location)
on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ language. (Language)

S
DO _____
Name and Signature of Officer Name or Number of Interpreter (if applicable)

Form I-208 (Rev. 09/04)

ISSUED BY ICE

SIGNED BY AN ICE OFFICE

ICE or CBP Arrival

Managing the Search and Seizure Process

- Cooperate within the limits of the warrant.
- Do not interfere with officers' search and seizure within the scope of the warrant.
- Record details of the search, including items taken and persons spoken to or detained.

Protecting Business-Critical and Confidential Documents

- If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.
- Consult legal counsel immediately for guidance

Documenting the Activity

Documentation and Evidence Collection

- Keep detailed records of all interactions, searches, and seizures.
- Request a copy of the warrant and any inventory of seized items.

Post-Raid Review and Next Steps

- Conduct a debriefing with key personnel to document the event.
- Consult an immigration attorney to assess the situation and respond appropriately.
- Provide necessary support to affected employees.
- Revise and update this action plan based on new developments or legal requirements.

ICE I-9 Audits

- An I-9 audit (Notice of Inspection) may arrive by mail or hand delivered by an ICE officer.
- The company will have 3 days to produce the requested I-9s and other documents.
- Do not waive the 3 days – take the time to prepare the submission with legal counsel.
- Extensions may be requested though are not often given for more than a few days.
- Arrange with requesting officer where to produce the documents – either onsite at the workplace, via hand delivery to the officer or electronic submission.
- If onsite inspection is required, provide the officer a place to review the documents that is separate from major areas of operations or other documents/items that could lead to further investigations.

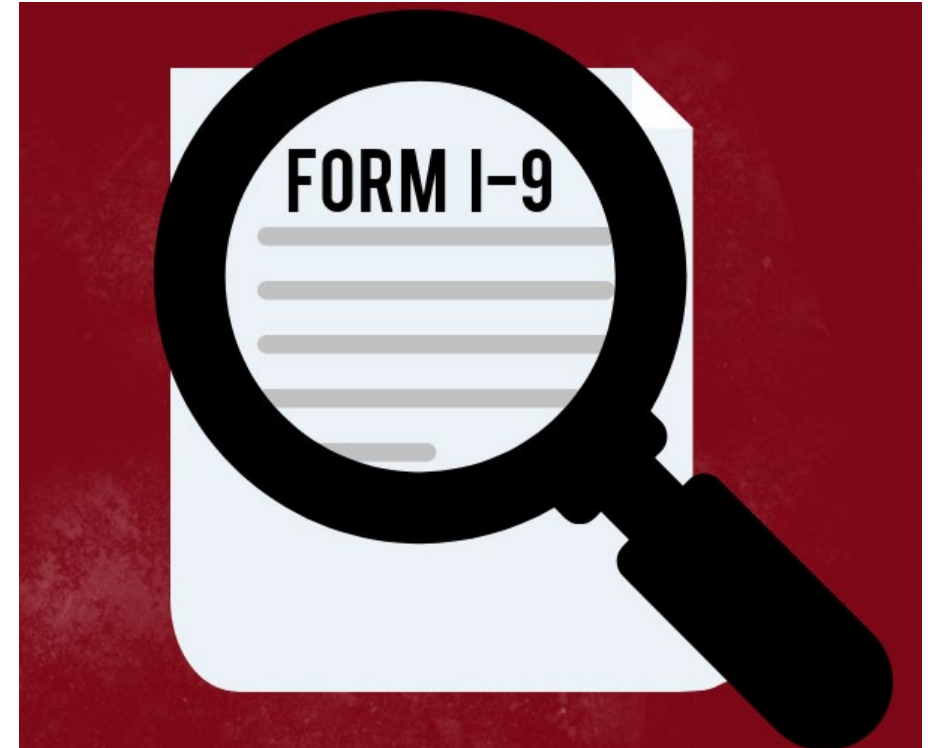
Penalties

- Paperwork violation fines now range between
- \$288 to \$2,861 per violation
- Knowingly hiring or employing unauthorized workers have fines ranging from \$716 – \$5,724 per employee for the first violation.
- Second- and third-violation of knowingly hiring/employing range between \$5,724 up to \$28,619 per employee.
- Arrests and criminal convictions for knowingly hiring or employing unauthorized workers are on the rise as well.



Form I-9 Basic Requirements

- For all Active Employees hired after November 6, 1986
- Section 1 - completed by employee no later than start date of employment.
- Section 2 - completed by employer by end of third business day after employee starts work.
- May complete form prior to start date if offer of employment is made and accepted.
- Use Form I-9 with revision date 8/1/2023 for new hires and reverifications
 - The previous version, dated "10/21/2019," was only valid until October 31, 2023.



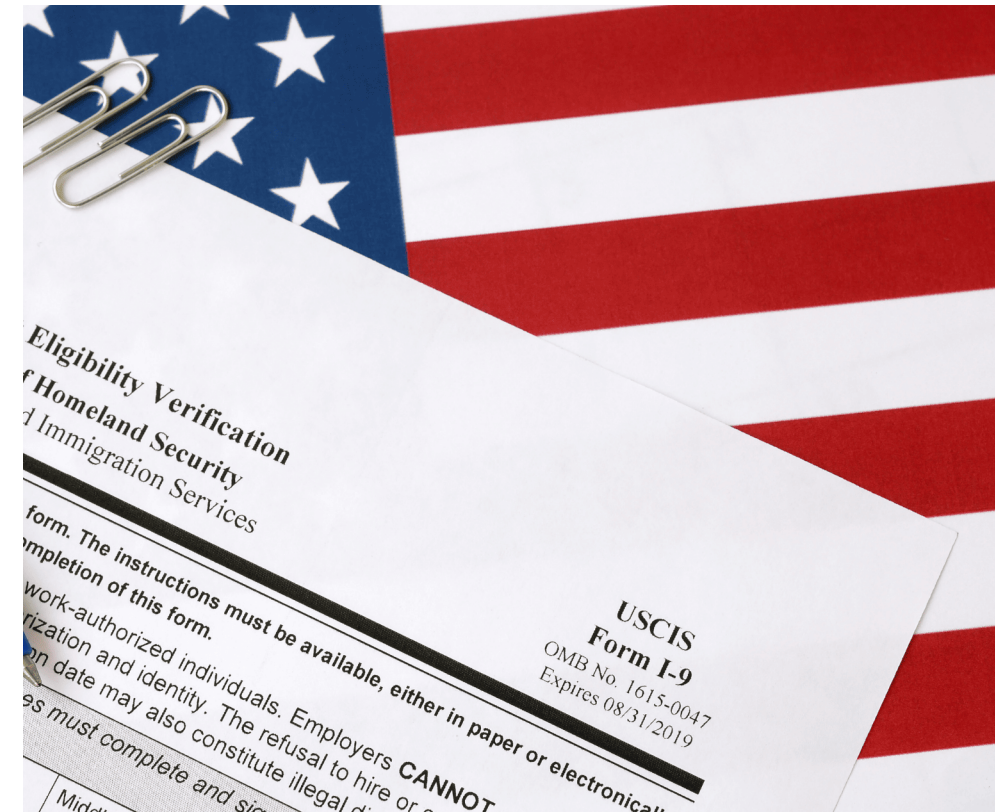
I-9 Compliance

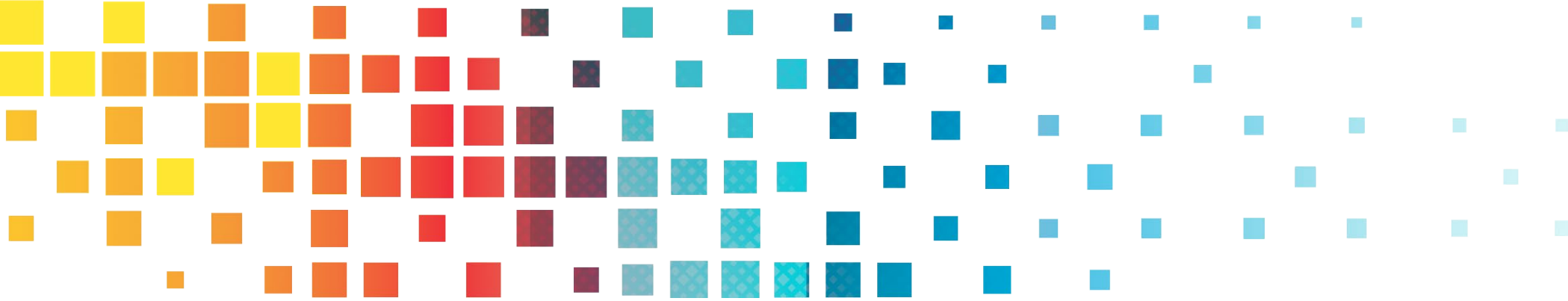
- Provide updated training for all managers, human resources personnel, and staff involved in the I-9 process.
- Provide updated training for all involved in the E-Verify process, including training on fraud awareness and anti-discrimination.
- Update immigration policies in handbooks.
- If your company does not have an immigration compliance policy, now is the right time to consider implementing one.



I-9 Compliance

- Update internal business processes associated with I-9s and E-Verify.
- If your company uses an electronic I-9 provider, contact the provider now to ensure its system incorporates the new changes and complies with **DHS requirements**, including audit trails;
- Enlist outside immigration counsel to conduct an attorney-client privileged audit of your I-9s
- Evaluate E-Verify advantages and disadvantages with your immigration counsel to determine if your company should take advantage of the remote verification option for E-Verify employers.





Fisher Phillips Resources



Employer's Rapid Response Website



Complimentary
checklist available on
the [Employers' Rapid
Response webpage](#)

Employer DHS/ICE Raid
Preparedness Action Plan Checklist

- Immigration Point Person**
 - ☐ Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.
 - ☐ Ensure all employees are aware of who this person is and how to contact them.
 - ☐ Immigration Point Person:
 - Name:
 - Contact info:
- Employee Awareness and Communication**
 - ☐ Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.
 - ☐ Provide clear instructions on workplace rights and responsibilities in case of a raid.
 - ☐ Inform employees that they should not communicate with DHS/ICE/CBP on the Company's behalf.
- Workplace Signage and Access Control**
 - ☐ Ensure proper signage is displayed on all private and non-public workspaces.
 - ☐ Restrict unauthorized access to non-public areas unless legally required.
- Handling ICE or CBP Agent Arrival**
 - ☐ Step 1: Ask agents if they have a warrant.
 - ☐ Step 2: If no warrant is presented, deny access to employees, documents, and non-public areas.
 - ☐ Step 3: If a warrant is presented, carefully review its details.
- Validating the Warrant**
 - ☐ Confirm it is a **judicial warrant**, issued by a federal court and signed by a judge.
 - ☐ If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

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- Managing the Search and Seizure Process**
 - ☐ Cooperate within the limits of the warrant.
 - ☐ Do not interfere with officers' search and seizure within the scope of the warrant.
 - ☐ Record details of the search, including items taken and persons spoken to or detained.
- Employee Rights and Conduct**
 - ☐ Inform employees that it is their **choice whether** to answer questions from ICE agents.
 - ☐ Inform employees that it is their **choice whether** to remain silent and request legal representation.
- Documentation and Evidence Collection**
 - ☐ Keep detailed records of all interactions, searches, and seizures.
 - ☐ Request a copy of the warrant and any inventory of seized items.
- Handling Arrested or Detained Employees**
 - ☐ Gather details on where detained employees are being taken.
 - ☐ Notify legal counsel or an immigration attorney for assistance.
- Protecting Business-Critical and Confidential Documents**
 - ☐ If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.
 - ☐ Consult legal counsel immediately for guidance.
- Post-Raid Review and Next Steps**
 - ☐ Conduct a debriefing with key personnel to document the event.
 - ☐ Consult an immigration attorney to assess the situation and respond appropriately.
 - ☐ Coordinate with crisis communications team to manage post-raid internal and external communications and to limit risk and minimize exposure.
 - ☐ Provide necessary support to affected employees.
 - ☐ Revise and update this action plan based on new developments or legal requirements.

Disclaimer:
This material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client-lawyer relationship between Fisher & Phillips LLP and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material.

With almost 400 attorneys in 41 offices across the United States and Mexico, Fisher Phillips is an international labor and employment firm providing practical business solutions for employers' workplace legal problems. We regularly advise and counsel clients on issues surrounding wage and hour, employment discrimination and harassment, litigation, workplace safety, immigration, trade secrets and non-competes, and more.



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Employer's Rapid Response Team Hotline

24/7 Emergency Hotline:

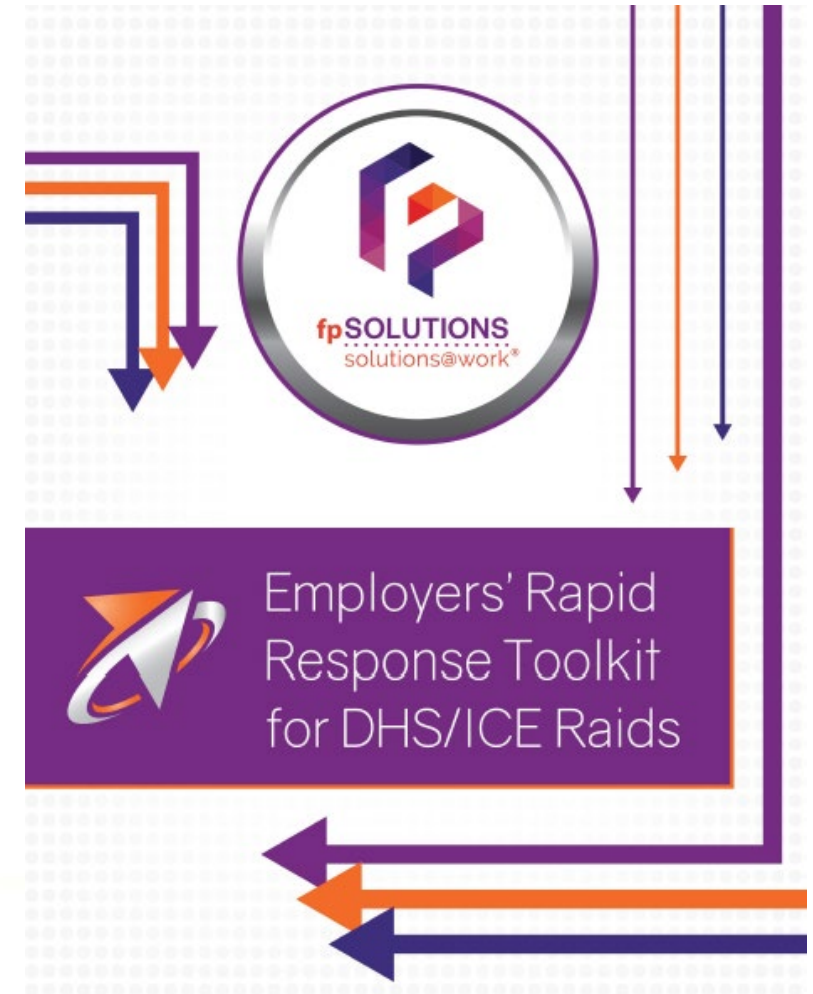
- In the event of an active ICE enforcement action, call us at **877-483-7781** for immediate assistance.
- DHSRaid@fisherphillips.com



Employers' Rapid Response Toolkit for DHS/ICE Raids



- Available for purchase through fpSolutions
- **\$1,150 per toolkit**



QUESTIONS?



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AND THE WINNER IS

2025 Louisville Annual Labor & Employment Seminar

*Federal and Kentucky
Updates: Navigating
Workplace Law in 2025*

October 30, 2025



Presented by



Emily N. Litzinger

Partner / Louisville

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Annie N. Harb

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Updates to Cover

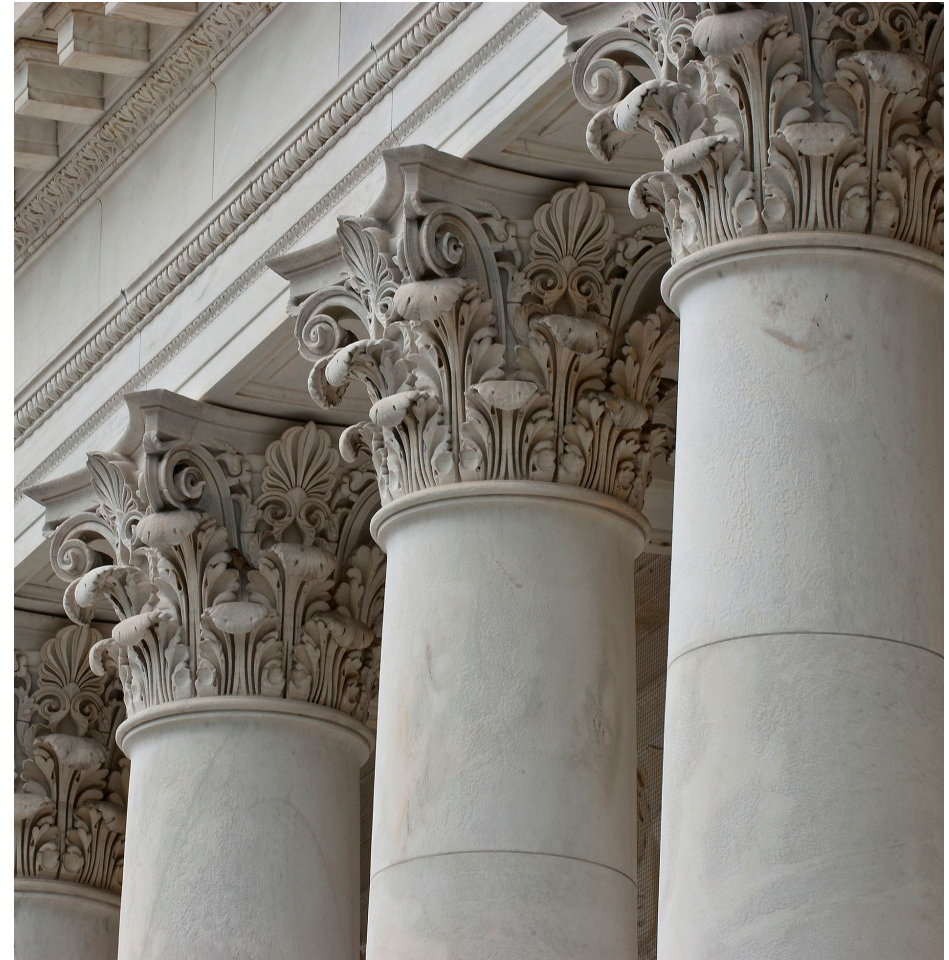
- Federal Legal Developments
- Kentucky-Specific Legal Updates
- Practical Employer Takeaways
- Q&A



EEOC Guidance and Related Executive Orders



- Executive Order titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”
- Executive Order 14281, "Restoring Equality of Opportunity and Meritocracy."
- On March 19, 2025, the EEOC released technical assistance documents to provide clarity for employers.
- Standards regarding “Reverse Discrimination” and Disparate Impact claims
- EEOC Commissioner Updates



Pregnant Workers Fairness Act (PWFA)



Final regulations now
in effect



Early litigation trends
show increased claims
around job
modifications and light
duty



Employers must
engage in interactive
process, not assume
undue hardship

Fair Labor Standards Act (FLSA)



FLSA enforcement
rollback



Self-audits and “PAID”
program revival



Return of opinion
letters

Changes in the NLRB

- Union activity, the NLRB, and the aftermath of *Stericycle*
- Return to pro-employer NLRB decisions
- No Quorum



Joint Employer Standard and Independent Contractor Classifications



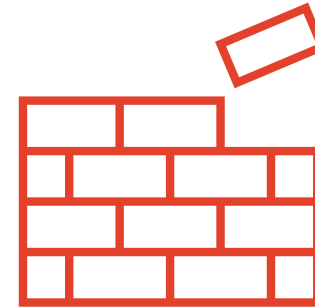
- Likely return to narrower definition under NLRB and DOL.
- What this means for franchisees/franchisors relationships.



Minimum Wage + Tip Credit



No federal increase likely,
states increase.



Evolution of tip credit

New Regulatory Rollbacks



What Should Employers Do Now?

1. Track the proposals closely.
2. Assess the impact on your business operations.
3. Watch for legal challenges.
4. Evaluate public perception risks.
5. Engage with industry associations and regulators.



Government Shutdown

- Agency operations paused
- Delays in enforcement & filings
- Contractor work interruptions
- Immigration processing impacted
- Legal obligations still apply



Kentucky Law Updates



Senate Bill 84



Medical Marijuana
Updates



New Executive Orders

Practical Takeaways for Employers



- Revisit handbooks and updated accordingly.
- Revise drug and testing policies for clarity under KY medical marijuana law.
- Develop a regular cadence of manager and supervisor training regarding discrimination and harassment in the workplace.
- Create processes for overnight changes in the law, and how your business will respond.



QUESTIONS?



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AND THE WINNER IS



2025 Louisville Annual Labor & Employment Seminar

*Three's a Crowd:
Navigating the
ADA/FMLA/WC Triangle*

October 30, 2025

Presented by



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Now What?

After finishing up with her last patient of the day, Linda, a front desk coordinator, catches her foot on a loose floor mat and falls, injuring her wrist and hip.

The next morning, Linda calls in and says she'll need surgery and will be out for an extended period.

Linda has only been with the practice for a little over a year, and truthfully, she's been a challenge since day one.

Now What?



The Triangle

The situation with Linda creates a few challenges because at least 3 separate laws are implicated.

- The Family and Medical Leave Act
- The Americans with Disabilities Act
- State workers compensation laws



The Law – Refresher



Family Medical Leave Act - FMLA

Focus:

- Provide unpaid, job protected leave
- Protect from adverse treatment
- Prevent retaliation
- Maintain benefits

Fundamentals of employee eligibility:

- Minimum service – 12 months;
- Minimum hours – 1,250 in previous 12 months; and
- Minimum worksite – 50 employees within 75 miles.



Who is Eligible for FMLA Leave?

Applicable “Employers”

- Any person who employs 50 or more employees

“Eligible Employees”

- Employed for at least 12 months, need not be consecutive (breaks in service of 7 years or more not usually counted) and any part of a week or payroll counts whether paid or not if employer provided other benefits or compensation)
- Worked at least 1250 hours during the 12 months prior to the leave (FLSA rules apply to count hours actually worked; vacation does not count, but some other protected leaves (like USERRA) count)
- Employed at a site where an employer employs at least 50 employees within a 75-mile radius
- Eligibility determined as of date leave is to commence



Who is Eligible for FMLA Leave?

Employee must work at a worksite with at least 50 employees within a 75-mile radius.

- Measured in surface miles
- Count is made when employee requests leave, not when leave commences



The Law – Refresher

Americans with Disabilities Act - ADA

- Prohibits discrimination against qualified individuals with a disability.
- The law requires employers to make **reasonable accommodations** for disabled individuals as long as there is no undue hardship to the business; no direct threat of harm to the individual or others; or no fundamental alteration of the business.
- Goal is to create level playing field for “disabled” employees or applicants.
- Emphasis on what individuals can do - not on limitations.



Duty to Accommodate (ADA) – When Triggered?

The Company has a duty to initiate the process if the employee's disability is *known* or *apparent*.

- Employee tells the Company
- The Company otherwise becomes aware of the condition, such as through a third party or by its own observation.



ADA - Reasonable Accommodations

Two general requirements:

- The Company has duty to engage in a timely, good faith interactive process.
- The Company has duty to provide reasonable accommodations in appropriate circumstances.



The Law - Refresher



Workers' Compensation

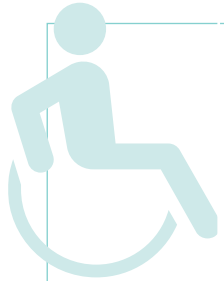
- Protects employees who suffer work-related injuries.
 - Medical insurance for care and rehabilitation.
 - Does not guarantee leave or job protection.
- Employer may not terminate or discriminate solely on the basis that employee pursued workers' comp benefits.
- Injured employee is limited to statutory caps on compensation for covered medical conditions.
- Governed by state law and varies from state to state.
- Applies only to work-related injuries and illness.
 - Income replacement if employee can't work, but
 - Not if employee can work (e.g., light-duty), yet refuses.



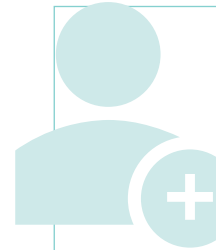
Workers' Compensation

- Any employer in the Commonwealth of Kentucky with one or more employees is required to provide workers' compensation insurance.
- If the employer fails to provide this coverage, it can be responsible for liquidated damages in an amount equal to the compensation due the employee.
- A company's operations can also be restrained for failure to provide coverage or benefits.
- The state can place a lien on an employer's property for unpaid compensation owed to an employee.

Integrating FMLA, ADA and Workers' Compensation



Must the employer grant FMLA leave in cases of disability or workers' compensation?

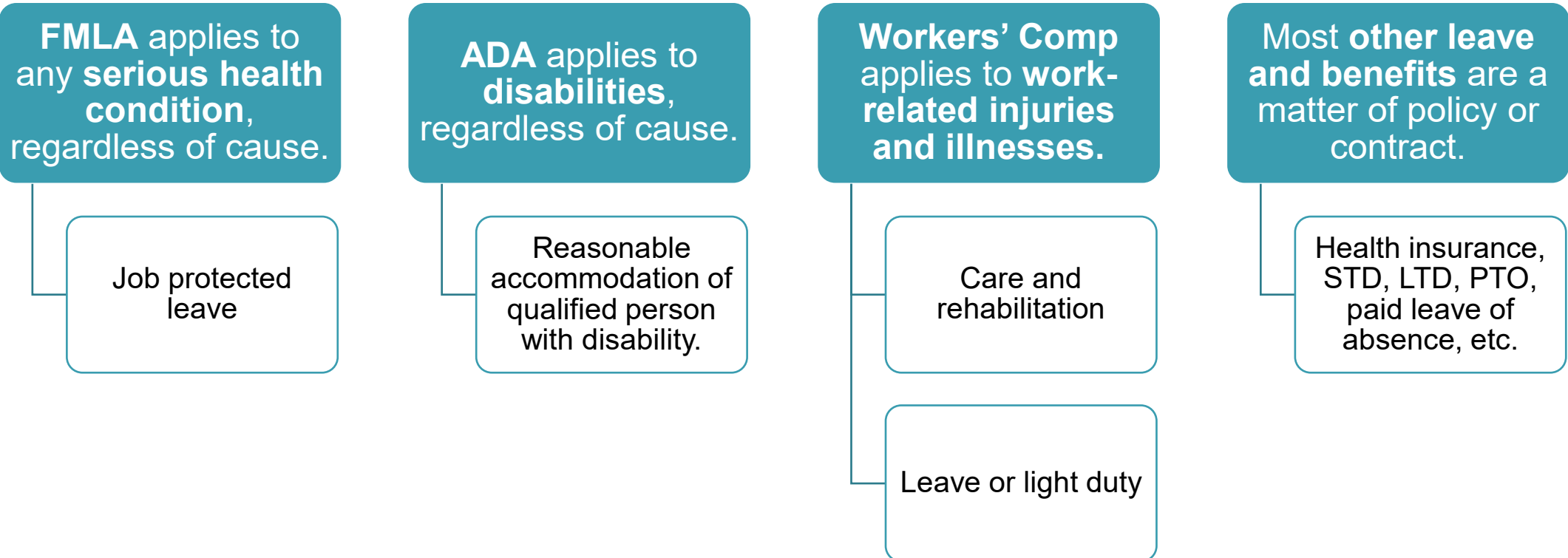


Must the employer grant disabled employees leave in addition to FMLA leave?



May the employer deduct periods of leave from a disabled employee's FMLA or PTO allotment?

Each Law Has a Different Purpose



The Laws Sometimes Overlap

Is leave always required?

- Only the **FMLA** requires granting leave.
- Leave might be required under Workers' comp.
- Leave might be required under the ADA.

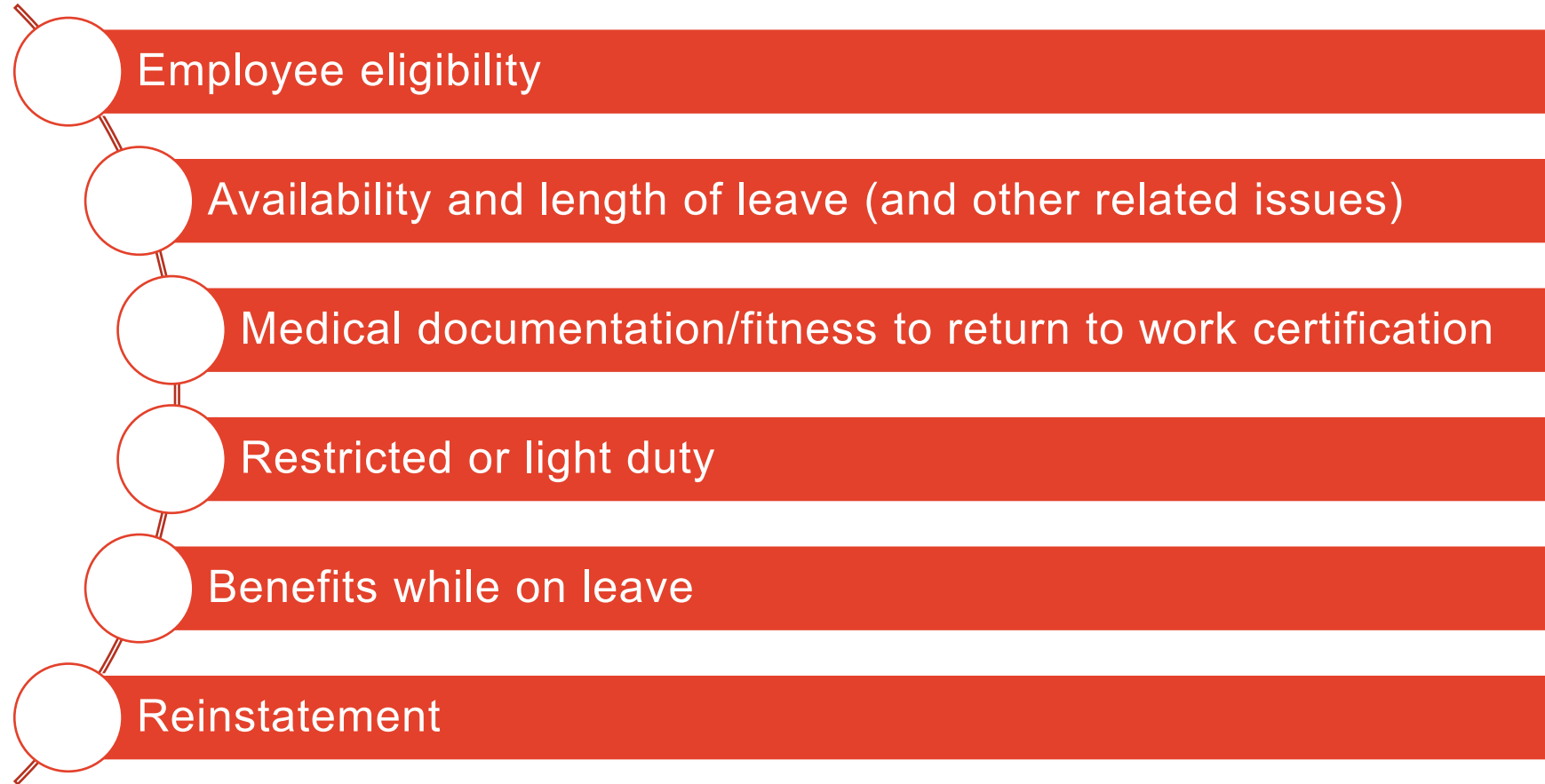
Only the ADA requires “accommodation.”

- Leave might be a reasonable accommodation.
- “Light duty” is often not an ADA reasonable accommodation.

When do all three laws apply?

- **Only** an employee's **work-related** illness or injury could involve all three laws.

Areas of Interplay & Important Differences



Employee Eligibility

FMLA

- 12 months after employment
- 1250 hours within previous 12 months

ADA

- 1st day of employment

Workers' Compensation

- 1st day of employment
(unless opted out - in KY)

When is Leave Required?

FMLA

Requires leave for serious health conditions.

ADA

May require leave as an accommodation of a disability.

Workers' Compensation

Does not expressly require leave but provides income continuation if unable to work because of work-related injury/illness.

How Much Leave is Required?

FMLA

Employee is entitled to up to 12 weeks of unpaid leave.

ADA

No specific time limit but generally cannot be indefinite. May require additional leave if considered a reasonable accommodation.

Workers' Compensation

Less specific (causes employers the most problems).

When is Paid Leave Required?

FMLA

- Leave is unpaid.
- Employer may require, or employees may elect, to substitute accrued vacation, sick, or other paid leave.

ADA

- Employer should allow or require use of accrued paid leave.

Workers' Compensation

- Up to two-thirds of normal pay as a wage benefit.
- FMLA prohibits use of paid leave if employee is receiving workers' compensation. (Employer still should designate as FMLA leave if appropriate.)
- Can agree to let them use PTO so they are fully paid.
- Similar rule for short term disability plan.

Must the Employer Grant FMLA Leave in Cases of Disability or Workers' Compensation?

- Not every disability or workers' compensation injury is FMLA qualifying.
- A disability or workers' compensation injury must involve a serious health condition to qualify for FMLA leave.



Exceptions

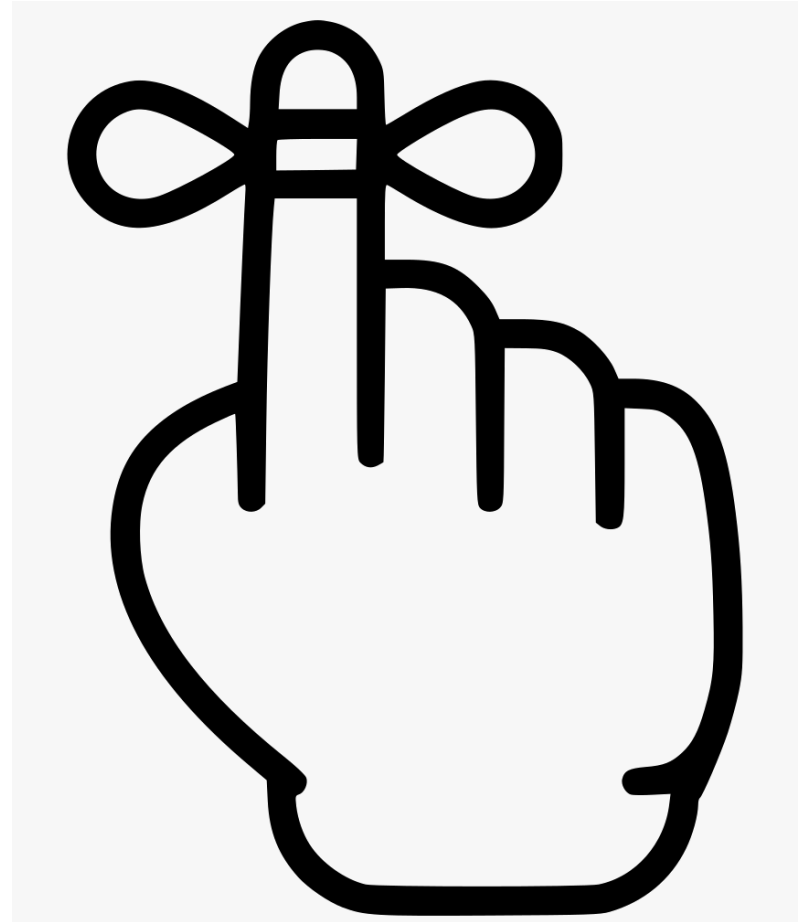
- Some disabilities may not be a serious health condition if no treatment needed:
 - Blindness
 - Amputation
- Thus, FMLA not available.



Things to Remember



- When laws overlap, provide the greatest benefit.
- Strictly follow all procedural requirements.
- DO NOT use important words inappropriately (e.g., “accommodate”).
 - We reasonably accommodate ADA disabilities;
 - We offer light duty for WC restrictions;
 - We provide FMLA leave for serious health conditions.
 - We sometimes honor minor, short-term doctors’ restrictions even if no law requires it.
- Using the wrong words can jeopardize the Company’s rights.



Scenarios



Scenario 1



An employee with a serious health condition requests leave under the FMLA. However, he has only been employed for six months. Under the FMLA, the employer may deny the leave request because the employee is not yet eligible for FMLA leave (employees must have been employed for at least 12 months/1,250 hours of service to be eligible for FMLA leave).

- May the employer also deny the employee leave under the ADA?
- What if the employee's serious health condition is an injury suffered at work?

Scenario 2



An employee with an ADA disability needs 13 weeks of leave for treatment related to the disability. The employee is also eligible under the FMLA for 12 weeks of leave, so this period of leave constitutes both FMLA leave and a reasonable accommodation. Under the FMLA, the employer may deny the 13th week of leave.

- May the employer do the same thing under the ADA?

Scenario 3



An employee with an ADA disability has already taken 12 weeks of FMLA leave. He notifies his employer that he is ready to return to work, but he is no longer able to perform the essential functions of his original position, nor of an equivalent position.

- May the employer terminate the employee?
- Why or why not?

Scenario 4



An employee on workers' compensation and FMLA leave is released to return to light duty after 6 weeks but refuses to do so. Under the workers' compensation law, the employee's workers' compensation benefits stop as a result. The employer would also like to treat the employee's refusal as a voluntary resignation.

- May it do so without violating the FMLA?

Scenario 5



Jan, who is eligible for 12 weeks of FMLA leave, emails her direct supervisor and an HR representative, indicating that she needs to be off work for at least a week, maybe longer, for what appears to be an FMLA-qualifying reason. While Jan is in the process of obtaining a completed certification form from her HCP, she does not call in her absences daily. Instead, she periodically emails an HR representative with updates on her FMLA paperwork and indicates that she may need additional time to submit. She has no contact with her immediate supervisor after the initial email.

- May Jan be terminated for job abandonment after failing to call-in two consecutive days?

Scenario 6



Greg, who has been with the organization for several years, begins experiencing mental health challenges and takes FMLA leave as an accommodation. After Greg exhausts his FMLA benefits, HR sends a letter consistent with company policy requesting that Greg return to work by a specific date with a doctor's note. Greg submits the paperwork which notes he will return by February 28. Before the deadline, Greg responds, stating that he is still unable to return to work and requests an extension of leave until April, along with a doctor's note. HR grants this extension, but when April comes, Greg again says he cannot return to work until June and submits another doctor's note, this time from another doctor.

- Does the organization have to grant this next request?
- Why or why not?

Scenario 7



A company based in Kentucky hires Peter as a remote employee, based out of his home in Kentucky. Within a few weeks after his hire, Peter begins showing up late to virtual meetings and a review indicates he is not consistently logging into work at 9am, which is his normal start time. HR speaks to Peter who discloses that he is an alcoholic, and he is working remotely from a treatment facility in California and has been having trouble with the time difference. Peter provides evidence that he is in fact in a treatment facility. Aside from attendance issues, Peter's performance has met expectations.

- What can the company do in this situation?
- How could the company better protect itself in the future?

Scenario 8



Marcia, a warehouse supervisor, has been working at a logistics company for five years. She is diagnosed with multiple sclerosis (MS). After consulting with her doctor, Marcia requests intermittent FMLA leave to attend medical appointments and manage flare-ups. The company approves the FMLA leave. At the same time, Marcia requests a reasonable accommodation under the ADA: a modified work schedule and occasional remote administrative work during flare-ups. Initially, her manager agrees, but after a few weeks, the accommodations are informally revoked after Marcia's coworkers complain about having to take on Marcia's work while she is at home. Marcia is told she must work full shifts on-site or use FMLA time if she can't. Marcia eventually exhausts all of her FMLA time, but continues to be absent during flare ups. She is then terminated for attendance.

- Do you have any concerns with Marcia's termination?
- How could the employer have handled this differently?

Scenario 9



Mike works in accounting at a large organization. One day he asks his supervisor if he can work a four-day, ten-hour-day workweek because he is also running a food truck business. The supervisor says no. The next week, Mike submits an accommodation request for a four-day, ten-hour-day workweek and provides a doctor's note stating that Mike has severe anxiety and this accommodation is necessary.

- How would you handle?
- What would you consider in evaluating this request?

Scenario 10



Carol, an office manager, slipped on a wet floor while at work and broke her leg. She took FMLA leave and was expected to return in 12 weeks but was miraculously able to heal and return in only ten weeks. The company, however, no longer needs her because, while she was out, it hired another office manager who was twice as productive as Carol ever was.

- What can the employer do?
- What if Carol can return, but has significant restrictions, such as only being able to sit for 30 minutes at a time?

Scenario 11



A company has a drug policy that calls for termination of an employee who tests positive for illegal drugs and requires testing after any work accident. Alice drives a forklift into a piece of machinery at work, injuring her hand. She is ordered to drug testing. Instead of going to get tested, Alice checks herself into rehab, informs the Company that she suffers from a disabling pill addiction, and needs to use FMLA while in rehab. While in rehab, Alice will also need treatment for her battered hand.

- What can the company do?
- Is the company responsible for workers' compensation in this case?

Scenario 12



Bobby, a business consultant, takes FMLA to care for his new child, but while on FMLA, he cannot help himself and goes to work to see how everyone is doing. While visiting the office and showing off pictures of his new baby, he also helps a subordinate with a presentation for an important meeting and is then roped into helping set up a conference room for the meeting. While setting up the room, Bobby throws out his back and ends up needing to visit the ER. Afterward, Bobby lets his employer know he will need more FMLA to recovery from hurting his back. Bobby submits paperwork from a doctor indicating he needs only about a week to recover but then submits paperwork from another doctor indicating he needs six weeks to recover. Bobby already used three weeks of FMLA when he hurt his back.

- How would you handle?
- Is Bobby eligible for additional FMLA?
- Is this injury compensable under workers' comp?

QUESTIONS?



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