Avoiding An ICE Raid

Insights
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It has been fewer than 100 days since Donald J. Trump became the 45th President of the United States of America. In this short time, there has been a flurry of immigration-related activity, which has caused the national conversation on immigration to reach a fever pitch. While discussions about "sanctuary cities" or the "travel ban" are certainly worth having, only one of the topics *de jour* has the potential to have an immediate impact on your workforce: ICE raids. Advanced preparation and proper response are key to ensuring that your business does not become part of the conversation.

The Times They Are A-Changing

The Immigration and Customs Enforcement (ICE) force is the second largest federal law enforcement agency, and it is responsible for enforcing federal laws concerning border control, customs, trade and immigration. One way ICE carries out its responsibilities is to conduct enforcement and removal operations, through which ICE identifies and apprehends removable aliens. These operations are colloquially referred to as "raids," though ICE prefers the term "targeted enforcement actions."

Despite the recent uptick in media coverage, ICE was not previously a "do nothing" agency. In fact, under the Obama Administration, it assisted with the deportation of more than two million people. But, during a majority of that time, ICE focused its deportation efforts on criminal immigrants or those who posed a threat to national security or safety. The first raids under the Trump Administration have targeted undocumented immigrants more generally, which illustrates a change in enforcement priorities. This change, combined with the Trump Administration's promise to vastly increase the number of ICE officers (many of whom will be charged with ensuring employers' compliance with federal immigration law) and other hardline approaches to immigration issues, suggests an increased likelihood that your business could be the target of a raid. This begs the question: are you ready?

An Ounce of Prevention Is Worth A Pound Of Cure

Hopefully it comes as no surprise that you should only employ those who are authorized to perform work in the United States. Likewise, you are presumably aware that you must complete a Form I-9 (and possibly, the E-Verify process) for each employee. It is critical that you understand and comply with these obligations. ICE's favorite enforcement tool is the Form I-9, and if ICE finds instances of non-compliance, you could be fined thousands of dollars in civil penalties or be subjected to criminal prosecution.

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The easiest problem to solve is one that never arises in the first place. While following the law (and not employing illegal immigrants) is the obvious solution to avoiding legal trouble, it is not always that simple. For one, you may not realize that an employee submitted false information. Additionally, completing the Form I-9 properly can be complicated. In order to shield yourself from an ICE raid (or at least minimize your exposure), you should consider conducting an internal I-9 audit. This is an easy and relatively inexpensive way to confirm that you are following the law. Plus, it affords you the opportunity to resolve any issues before ICE discovers them (though, you should tread carefully when making corrections). Taking this step on the front end means you are better prepared in case ICE makes an unannounced visit to your place of business.

What To Do When You Are The Subject Of An ICE Raid

ICE typically inspects employers' premises in one of two ways. Commonly, it is with an audit. ICE initiates an audit with a Notice of Inspection, which asks you to produce certain I-9s for inspection within three days. Alternatively, ICE may conduct a raid, which is significantly more disruptive. To conduct a raid, ICE first obtains a search warrant (which means ICE must have probable cause). Because ICE has a search warrant, it takes the position that it is entitled to immediate access to your premises and your records. There is no three-day period to gather documents, and ICE agents will not wait for your attorney to arrive before conducting a search.

If you are the target of an ICE raid, there are certain things you should keep in mind. First, stay calm and ask for a copy of the warrant. You should examine the warrant to ensure things are in order (e.g., that the warrant is signed by a judge). From there, immediately provide a copy to your attorney. Second, monitor the search to ensure the ICE agents stay within the scope of the warrant, but stay out of the way. You can assign a company representative to follow the agents around the premises, and record (or video record) their actions, but do not interfere with their investigation or engage in any hostilities toward them. Third, be mindful of how your actions could harm the company. You should not do anything that might constitute harboring (e.g., hiding employees or aiding in their escape from the premises, shredding documents, or providing false or misleading information), and Company representatives should not give any statements to ICE agents without first speaking with legal counsel (though, you cannot instruct employees not to speak to agents if questioned). Finally, if agents want access to locked facilities, you should unlock them and cooperate as much as you can.

Undeniably, ICE raids can be both disruptive and traumatic. In this new era of immigration enforcement, employers should be on alert that non-compliance with federal immigration laws can result in significant consequences. This is especially true if you operate in an industry that heavily relies on immigrant workers, like farming, hospitality, or food processing. But, by undertaking the effort now, employers can limit their risk and possibly avoid an invasive ICE raid all together.

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