



February Forecast Calls For Persistent ICE Immigration Raids Across The Country

EMPLOYERS NEED TO PREPARE NOW TO AVOID FEDERAL ENFORCEMENT ACTION

Insights

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Federal enforcement officials are amplifying their efforts to crack down on undocumented workers and the businesses that employ them, as Immigration and Customs Enforcement (ICE) officials have raided over 120 businesses in just the past five days. While most of these latest efforts have been concentrated in California, no business in the country is immune from this show of strength from the federal government. Moreover, President Trump's 2019 budget proposal includes a 35 percent increase in penalties for employers that hire undocumented workers, so the stakes could soon be much higher for employers. What can you do today to minimize the risk of your business being a target, and what should you do if you are visited by federal officials?

Background: Heat Has Been Turned Up In 2018

The new year has been a turbulent one when it comes to ICE enforcement activity. In January, immigration officials raided dozens of 7-Eleven stores across the country in search of undocumented workers and managers who knowingly employ them. Those raids involved nearly 100 stores in 17 states from coast to coast, and resulted in at least 21 arrests. In early February, another 77 businesses were visited by ICE agents across Northern California.

If employers thought that they could take a breath and have time to recover after that burst of activity, federal officials sent an unpleasant reminder in recent days that they are not resting. In the largest sweep this year, ICE agents visited 122 business between February 11 and February 15 with an aim of pursuing at least 400 people thought to be unauthorized to work in the United States. At the time of publication, at least 212 people had been detained by federal officials and could face deportation, while the businesses that employed them will face federal scrutiny and possible punishment. According to ICE, each of the 122 businesses will have their hiring records audited to determine whether they are in compliance with the law. "If the businesses are found to not be in compliance," the agency warned, "they will face civil fines and potential criminal prosecution."

The latest sweep has targeted the Southern California area, possibly in response to a new state law that recently went into effect which aims to create somewhat of a "sanctuary state" by imposing obligations on employers who are facing immigration enforcement activity at their worksites. But employers elsewhere in the country should not believe they are immune from similar activity. According to statistics released by the federal government, while ICE conducted approximately

1,300 immigration raids in the year 2017 alone, reports indicate that the agency has set a goal of at least 5,000 enforcement visits at U.S. workplaces in 2018. And given that President Trump's budget proposal includes \$570.9 million to hire 2,000 additional ICE officers and 300 special agents for ICE's Homeland Security Investigations division, the agency could very well have the resources to carry out this aggressive posture for some time.

In other words, you have never been at more risk of facing an immigration raid at your workplace than you are right now. Have you prepared by taken steps to reduce the chances of facing an unpleasant visit? Do you have a plan in place should federal officials come knocking on your door tomorrow?

What You Can Do Today To Prepare: 5-Step Plan To Avoid A Similar Fate

By taking concrete steps now, you can limit your risk and do your best to avoid an invasive ICE raid altogether. Here are five steps you can take today to ensure extreme vigilance in an era of extreme vetting.

- Ensure your **I-9 compliance programs** are in place, up-to-date, and followed.
- **Complete I-9 forms** if any are lost or missing. All current employees hired after November 6, 1986 must have an I-9 form on file. Use payroll records to ensure that you have all I-9 forms required for current employees or prior employees.
- **Train staff and managers** on how to complete an I-9, and what actions they should take when they are made aware that an employee may not be authorized to work in the U.S.
- Conduct **regular internal I-9 audits** and remedy identified errors. You should have outside counsel conduct periodic I-9 audits as well.
- Train a **rapid response raid team** responsible for immediately contacting immigration counsel and employment counsel in the event of a raid. They should be trained on what to do in the event of a visit from enforcement officials, as outlined below.

What To Do Should The Government Come Calling

ICE typically inspects employers' premises in one of two ways: through an audit, or through a raid.

What To Do If You Face An ICE Audit

The most common way in which your business might end up interacting with enforcement officials is through an audit. The agency will initiate an audit through a Notice of Inspection, which asks you to produce certain I-9s for inspection within three days. In addition to I-9 forms for current and recently terminated employees, you will most likely be asked to turn over a list of current employees, quarterly wage and hour reports, payroll records, E-Verify confirmations (if the company

uses the system), and related business information, including the business owner's Social Security Number.

If you receive such a Notice, immediately contact your legal counsel. You may be able to receive a short extension for legitimate business reasons depending on the type of audit requested, and your counsel might be able to work with the government official to make the process of an inspection more efficient for all involved. Once the audit is underway, a typical compliance review consists of an investigator verifying that your I-9 forms have been properly completed. This typically includes a review of your documents to ensure that they are timely completed, they are correctly and entirely filled out, and that the associated documents establishing identity and employment eligibility are legitimate.

The I-9 form review process may take as little as two weeks or as long as a three years. Once the review is complete, ICE will inform you of the results. The best news you can hope for would be a letter indicating that you are in full compliance. If only minor violations were found, ICE may issue you a notice of technical or procedural failure indicating certain mistakes on forms, and you will have 10 business days to correct them.

If more substantive violations were found, ICE may issue you a warning notice without assessing a monetary penalty. However, if the agency determines that you have substantive violations or knowingly hired individuals not authorized to work in the United States, it may issue you a notice of intent to fine. If this occurs, your lawyer may be able to negotiate a reduction of the fine, payment plan, or request a hearing before a federal administrative law judge within 30 days.

ICE may also issue you a notice of suspect documents regarding an employee's authorization to work, advising you of potential penalties if you continue to employ that individual. In such a case, you will be given an opportunity to provide additional documentation to show authorization to work. Similarly, the agency may issue a notice of discrepancy indicating that work eligibility cannot be determined for a certain employee, with an opportunity for that worker to provide documentation showing employment eligibility or face termination from employment.

What To Do If You Face An ICE Raid

Alternatively, ICE may conduct an actual raid, which is significantly more disruptive. To conduct a raid, ICE first obtains a search warrant (which means the agency has demonstrated to a judicial official that it has probable cause to effectuate an unplanned visit). If ICE officials have a search warrant when they come knocking on your door, understand that they will take the position that they are 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

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 their way to the extent possible. You can assign a company representative to follow the agents around the premises, and 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 undocumented workers, such as hiding employees, aiding in their escape from the premises, shredding documents, or providing false or misleading information. At the same time, company representatives should not give any statements to ICE agents without first speaking with legal counsel. However, be aware that you cannot instruct employees to refrain from speaking to agents if questioned, so you should let that process carry out without interference. Also, if agents want access to locked facilities, you should unlock them and cooperate as much as you can.

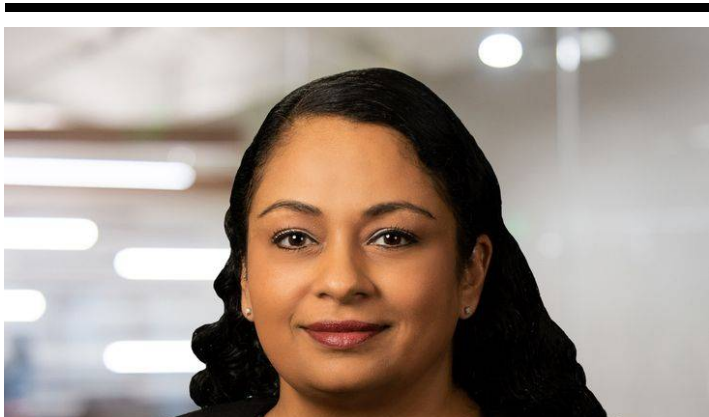
Fourth, you should track what and who is seized by ICE, providing your list to your legal counsel once the enforcement action has ended. Finally, you should prepare to address the media during and after a raid. Work with your legal counsel to determine the best way to accomplish this task and whether it is necessary to do so.

Conclusion

The time to prepare is now. Crossing your fingers and hoping that you will not be swept in these latest enforcement actions is not acceptable in today's climate. You owe it to your business to take effective steps now to prepare for a possible visit from an ICE enforcement official. If you have any questions about these developments or how they may affect your business, please contact any member of our [Global Immigration Practice Group](#), or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a specific national development. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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