

# What Employers Need to Know About I-9 Audits and Immigration Raids

By Michelle De Oliveira on February 5, 2025



On January 20, 2025, President Trump issued a series of Executive Orders focused on state and federal immigration law enforcement, border security, detention, and removal of individuals unlawfully present in the United States. On the same day, Acting Department of Homeland Security Secretary Benjamine Huffman issued two directives aimed at empowering law enforcement officials to enforce immigration laws-and on January 29, 2025, President Trump signed the Laken Riley Act, a law that requires federal detention of individuals without lawful immigration status who are accused of certain crimes.

As a result, immigration enforcement actions are on the rise-and U.S. Immigration and Custom Enforcement ("ICE") agents are being deployed to, among other things, investigate and detain individuals who do not have lawful immigration status in the United States.

Although these orders, directives, and policies appear to be fluid, employers should prepare and adapt accordingly.

## Addressing and Responding to Workplace/Jobsite Immigration Raids

In *public areas*, ICE agents do not need permission for access to and/or to speak with anyone who is out in the public (including employees).

However, to enter a *private workplace* to conduct an immigration raid, search, and/or investigation, ICE must have a judicial warrant. For this reason, if ICE shows up unannounced to conduct a search in the workplace or on a jobsite (considered private property), employers should: (1) request to see the warrant, (2) examine the warrant to ensure that it is a judicial warrant, signed by a judge, (3) determine the investigation's purpose, as specified in the judicial warrant, and (4) contact their legal counsel for guidance.

If/when presented with a valid judicial warrant for an ICE investigation and/or inspection, employers are encouraged to cooperate with the ICE agents and not interfere with the investigation.

Moreover, although historically ICE could not detain individuals in schools, churches and courthouses, that is no longer the case and restrictions on permissible ICE enforcement in what had been considered "sensitive locations," inaccessible to ICE, have been lifted.

## 1-g Inspections & Audits

Employers should prepare for 1-g audits, which are expected to increase in the very near future.

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*Background-Federal law* requires employees to complete an I-9 within 3 days of being hired. To support the I-9, employees need to provide supporting documentation from List A or from Lists Band C (as specified on the I-9). Employers must then sign an attestation on the I-9 under the penalty of perjury, confirming that: (1) they have examined the documents, (2) the documents appear genuine, and (3) to the best of their knowledge, the employee is authorized to work in the United States. Federal law imposes both civil and criminal penalties associated with hiring undocumented workers.

*I-9 Inspections-Absent* a shift in protocol by the Administration, the I-9 inspection process historically began with a Notice of Inspection served on the employer. Following service, employers typically have 3 business days to produce the I-9s. Employers may also be required to produce, among other things, payroll records, a list of active and terminated employees, articles of incorporation, and business licenses. Employees are generally given 10 business days to make any necessary corrections. Employers may be subject to penalties for violations, and employers who are found to knowingly hire or continue to employ individuals who are not authorized to work in the United States may be civilly fined and/or criminally prosecuted.

*I-9 Self-Audits-Given* that I-9 audits may be on the rise, employers should review their I-9 processes and procedures (including their use of appropriate forms) and consider conducting self-audits. **A helpful I-9 self-audit employer guide can be accessed here.**

## Planning & Preparation

Based on the above, employer planning and preparation moving forward are essential.

### Step 1: Develop A Plan

Employers should develop a plan to address what to do in the event of an immigration raid in the workplace. The plan should include, among other things: (1) how to interact with ICE, (2) the questions to ask an ICE agent, (3) what to look for, (4) who is authorized to have such interactions, and (5) how to best document observations during an ICE raid, noting the “who, what, when, where, why, and how” as observation records may be essential depending upon the outcome of the raid. Moreover, employers need to consider how to handle a situation in which ICE appears unannounced without a judicial warrant and insists on entering the premises to conduct a workplace investigation.

### Step 2: Train Necessary Management Personnel

Employers should ensure that only necessary management personnel are trained regarding the established plan in the event of a workplace immigration raid. With this said, employers should have more than one employee trained so that issues do not arise when certain individuals are not available or not at work on a given day or shift.

### Step 3: Do Not Interfere With Or Evade Federal Workplace Inspections

Employers are encouraged to ensure that they do not interfere with ICE inspections and/or raids, and that they do not encourage employees to evade inspections.

Although ICE inspections may create tension and turmoil among staff, employers will be well-positioned to: (1) not interfere with a workplace inspection; and/or (2) not assist employees in evading inspections.

### Step 4: Consider Risks Associated With Advising Employees About How To Respond In The Event of An Immigration Raid In The Workplace

Federal law makes it unlawful for an employer to employ an individual who does not have authorization to work in the United States. In other words, it is unlawful to knowingly employ an individual who does not have lawful immigration status. For this reason, employers should: (1) not advise employees to evade an inspection, and (2) be careful not

to solicit information from employees relating to their immigration status (especially given that the employee should have an 1-g on file).

At this point, it is unclear how widespread immigration raids will become. Despite the challenges that may follow, employers are encouraged to stay informed and implement (and update) plans to minimize disruption and risk, while also ensuring compliance.

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