

# Workplace Legal Alert



Law Office of  
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Labor & Employment Law

February 5, 2025

## ICE Audits and Raids

As a result of the Trump administration's effort to identify and detain undocumented workers, employers can expect increased Form I-9 audits and raids from Immigration and Customs Enforcement (ICE) officials.

Employers must verify the identity and eligibility to work in the United States of each person they hire by completing a Form I-9. To ensure proper employee eligibility verification, employers should follow these guidelines:

- A Form I-9 must be completed for each employee within three business days from the date of hire.
- You must allow the employee to choose which documentation they will present from the Form I-9 Lists of Acceptable Documents and accept documentation that reasonably appears to be genuine and relates to the person presenting it.
- Employers can, but are not required to make copies (or electronic images) of the documentation provided by the employee with the Form I-9.
- The Form I-9 (or a digital image) must be kept for inspection for all employees during their employment and for three years after the date of hire, or one year after the date employment ends, whichever is later.
- Employees with expiring immigration status, employment authorization, or employment authorization documents should have the necessary application or petition filed well in advance to ensure they maintain continuous employment authorization and/or valid documents. U.S. Citizenship and Immigration Services (USCIS) provides employment authorization extensions under certain conditions.
- You must reverify an employee's employment authorization no later than the date the authorization expires.
- Reverification is never required for U.S. citizens or noncitizen nationals. Reverification is also never required when the following documents expire: U.S. passports, U.S. passport cards, Permanent Resident Cards (also known as Green Cards), and List B documents. Other aliens may require reverification.

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- If you rehire employees within three years from the date you completed their previous Form I-9, you may complete a block on Supplement B, Reverification and Rehire, or complete a new Form I-9.

The Form I-9 and instructions (in both English and Spanish) can be obtained by clicking [HERE](#). USCIS also publishes an I-9 Handbook for Employers which can be accessed by clicking [HERE](#).

I-9 audits typically start with a Notice of Inspection (NOI) from the Department of Homeland Security (DHS) requesting that the employer provide, within three days, I-9s, a list of current employees, payroll records, owners' names, and names of any contractors or staffing companies used by the employer.

If you receive an NOI, immediately contact immigration counsel to obtain an extension of time to produce the requested documents and determine the focus of the inspection. Curable minor technical defects on any Form I-9 (e.g., missing dates or document numbers) can be fixed before turning them over to DHS.

A DHS review of the I-9 forms usually takes several months, after which a compliance letter will be issued if no problems were found. If violations are found, a notice will be sent with directives to remedy the violations and possibly an intent to fine which can be negotiated or litigated.

A raid is conducted by ICE without notice and must be conducted pursuant to a search warrant.

To prepare for a raid, employees who may have initial contact with ICE officials should be instructed to immediately contact management and immigration counsel who can act as the company representative to ensure the validity of the search, answer questions and monitor the search. ICE officials can be asked to delay their search until counsel arrives. Workers should be instructed to remain calm, not run for the exits during a raid (ICE typically secures the premises, monitoring exists and entrances), not assist in hiding employees, and not provide false information to ICE officers.

The representative should request identification from the ICE officials, document their identities, and review the search warrant. The warrant must be signed and dated by a judge and contain a clear description of the area and records to be searched. It is important that the representative not consent to the search, despite complying with the search warrant, to preserve the right to contest it. Even without a warrant, ICE officials



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can search public areas, such as the parking lot and lobby. Signage designating certain areas as “private” may help keep these areas off limits if not covered by a warrant.

Employees should be informed that they are not required to speak with ICE officials. It is advisable that anyone questioned during a raid invoke their right to remain silent and request an attorney. Unauthorized workers discovered onsite during a raid, can be arrested.

A raid may last for several hours. After ICE is done, the representative should request a list of the documents removed, property seized and employees arrested.

Companies can incur penalties up to \$2,789 per violation for errors on the Form I-9. Knowingly hiring undocumented workers can lead to fines of up to \$5,579 for first offenses and up to \$27,894 per worker for repeat offenses. Managers and business owners can face up to 10 years in prison and up to \$250,000 in fines for harboring undocumented workers. Companies can lose their license and be debarred from federal contracts.

If you have any questions or concerns, do not hesitate to contact me.

