

Employers beware! ICE doubles worksite enforcement investigations

U.S. Immigration and Customs Enforcement has announced that it opened 3,510 worksite investigations in the past seven months, more than doubling the number of investigations opened during fiscal year 2017.

The scrutiny on U.S. employers is part of ICE's effort to create a "culture of compliance" in the business community and is expected to intensify as President Trump takes further steps to crack down on immigration abuses.

Enforcement escalation

According to Derek N. Benner, acting executive associate director for ICE's Homeland Security Investigations Division, ICE's current strategy focuses on criminal prosecutions of employers that knowingly break the law. HSI is using I-9 audits and resulting civil fines assessed against employers as tools to encourage compliance with the law.

Considering the significant increase in enforcement since the start of fiscal year 2018, the strategy appears to be working.

In the seven months between Oct. 1, 2017, and May 4, 2018, ICE initiated a total of 2,282 I-9 audits—up 60% from the previous fiscal year. The agency also made 594 criminal arrests and 610 administrative worksite-related arrests, roughly four times the number of arrests made in all of fiscal year 2017.

Expect to be audited

According to Benner, ICE plans another wave of I-9 audits this summer, likely bringing the total number of investigations to more than 5,000 by the end of fiscal year 2018. With sufficient funding, ICE officials hope to open as many as 15,000 audits per year.

The goal: To instill in employers a "reasonable expectation" that they will be audited.

That makes now a good time for employers to conduct internal reviews of their I-9 files and compliance processes. Train hiring personnel on proper I-9 verification, correct any compliance deficiencies to the extent possible and make sure company officers, employees and everyone in HR knows what to expect in the event of a worksite visit.

If ICE comes calling

It is important to know what to do if ICE investigators show up at your workplace.

Ask ICE agents to identify themselves. Obtain their names and business cards.

Ask to review the search warrant if one is presented. If there is no search warrant, ICE cannot enter your

premises without the permission of an authorized representative.

Notify the appropriate corporate officers upon ICE's arrival. Obtain a copy of the search warrant and provide it to your attorney. Time is of the essence because ICE is not required to wait for counsel to arrive before beginning its search.

Know your rights. If ICE demands to review I-9 forms, the agent must produce a notice of inspection (NOI) or an administrative subpoena. ICE must give an employer at least 72 hours to turn over I-9 documents.

If ICE serves a NOI or subpoena, notify the appropriate corporate officers and provide them with a copy of that document. Again, time is of the essence because ICE tends to be strict with enforcing the 72-hour deadline.

Appoint a staff member to be the primary point of contact for the government agents conducting the investigation. Ideally, the staff member would be someone who is familiar with your immigration records and procedures so he or she can answer basic government questions. Employees can direct all inquiries and requests from ICE agents to the designated point of contact.

During the inspection

ICE investigators cannot run roughshod over your premises.

You may deny ICE access to nonpublic areas of your property if ICE does not have a search warrant. (In fact, employers in California are prohibited by state law from permitting ICE agents to access nonpublic areas without a warrant and from sharing personnel records with agents without a warrant, subpoena or NOI.)

Advise employees that they are not required to give any statements to ICE officers. If an employee is to be interviewed as a representative of the employer, the employer has the right to have an attorney present during any such questioning.

Take detailed notes of all activities being performed by the visiting ICE officials. If ICE agents remove documents or items from the premises when executing a search warrant, note what was removed and request an inventory list from the ICE agent.

An employer representative may legally shadow ICE agents as they execute the search warrant, so long as the representative does not actively interfere in the agent's execution of the warrant. ICE agents may not insist that an employer representative remain in a specific location or office unless ICE has detained or arrested that person based on probable cause or an arrest warrant.

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