



**WORKPLACE PREPAREDNESS:
ICE Audits and “Raids”**

***MAFVC
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Immigration Reform and Control Act

- Requires all employers verify each employee's identity and eligibility to work in U.S.
 - Includes both U.S. citizens and non-U.S. citizens
- Verification made through completion of Employee Eligibility Verification Form I-9 for each employee



Immigration Reform and Control Act

- Prohibits discriminating against worker due to national origin, citizenship, or intended citizenship
 - In addition to federal anti-discrimination laws
- Does not apply to employers of 3 or fewer workers



Form I-9 **Requirements**

- **Employers must obtain copy of employee's Social Security number or INS authorization number**
- **Employers must check documents submitted by employee to establish identity and eligibility**
 - **Examples: U.S. passport, Resident Alien Card**
 - **May choose to use E-Verify system**



Form I-9 Requirements

- Employers must retain Form I-9 for 3 years after employee has been hired or 1 year after employment relationship has been terminated (whichever is longer)
- Employers must present filed Form I-9 if inspected



Form I-9 **Reverification**

- **When current employee's authorization documentation expires employer must re-check documents and re-verify on Form I-9 that employee still authorized to work in U.S.**
 - **Not required for U.S. citizens, noncitizen nationals, or lawful permanent residents who presented a Form I-551 Permanent Resident card**



Form I-9 Rehires

- **Previous Form I-9 may be used to re-verify employment authorization of rehire if:**
 - **Former employee rehired within 3 years; and**
 - **Form I-9 was previously completed for employee; and**
 - **Authorization documentation on previous Form I-9 has not expired**
- **Once re-verified, employer must update previous Form I-9 to reflect date of rehire**



Form I-9 Rehires

- **If authorization for previous Form I-9 has expired**
 - **Employer must re-check the worker's authorization documentation and**
 - **Update rehire date on previous Form I-9**
- **For any former employee rehired after 3 years, employer must re-check worker's authorization documentation and complete new Form I-9**

ICE Audits vs. ICE Raids

Audit: Document Production with 3 business days advance notice.

“Raid:” Execution of a Search Warrant

If no or defective warrant = this is not a “raid.” You do not need to permit entry to any area not open to public or provide any documents.

ICE Audit

- Homeland Security Investigation (HSI)
 - HSI auditor usually accompanied by ICE agent or US Marshall
 - NOI – “Notice of Inspection” – gives you 3 business days to produce documents
 - Hand delivered, unannounced

ICE Audit

- Notify employees that NOI received
- Primary ask: I-9s
- Additional documents: payroll records, etc.
 - Anything to cross-reference the accuracy of the info on the I-9s.

ICE Audit

- Contact an attorney, if possible.
- Establish an employee protocol
 - Who talks to HSI and ICE, gathers names, badge numbers, provides notice to employees, compiles documents, etc.
 - Who deals with employees while HSI/ICE present.
 - **PRIOR TRAINING/EXERCISES!**

ICE Audit

- Establish an annual or more frequent review of all I-9s on file and have them reviewed for all potential errors or insufficiencies.
- Document all issues found and exactly how they were corrected or addressed.

ICE Audit

- No employee/family member should ever volunteer any information, access or documents.
- Avoid all casual conversation -- only communication through the designated point of contact.
- Designate where the agents can be and where they should never be without a warrant .

ICE Audit

- Never waive the 3 business days – including by casually producing anything!
- Designate where the agents can be, without a warrant.
 - It may even help to post signs as to where “public” is allowed and where is “employees only.”

ICE Audit

- I-9s should be stored separate from all other employee file/paperwork
 - Non-discrimination is the law!
- Compiled documents should be copied (retaining an exact duplicate of the compilation) and receipt acknowledged by agents

ICE Audit

- Usually, agents take the documents off-site to inspect.
- Various forms of notices follow:
 - Notice of Inspection Results
 - Notice of Suspect Documents
 - Notice of Discrepancies
 - Notice of Technical Failures
 - Notice of Technical and Procedural Failures
 - Warning Notice
 - Notice of Intent to Fine

ICE Audit

- Technical or Procedural Violations:
 - 10 business days to correct the forms.
 - That may need the employee, if re: Section 1.
 - Corrected or correctable violation still produce a fine.
- FINE CALCULATION: It's scary!
 - Substantive = >\$1000 per violation (not per form)

ICE Audit

- Fines are on a sliding scale: size of business, good-faith effort, seriousness of violation, involvement of truly unauthorized workers, history of prior violations.
- 65% of all I-9s have at least one violation.
- *Knowingly hires and continues to employ noneligible employee = up to \$16,000*

ICE Audit

- In 30 days, fines are final without an appeal.
- Appeals can be successful in reducing fines. Hire an attorney!
- **NEVER, EVER ALTER, FABRICATE OR DESTROY A DOCUMENT**

ICE Raid

- This means there is a Search Warrant, in any context.
- Establish and use similar protocols: One point of contact should record all information about agents, read and copy the warrant and accompany agents at all times. Separate employee designated to deal with employees, establish where employees should wait.

ICE Raid

- This is not a drill! (but do practice the drill)
- No one – any employee, owner, family member, etc. -- is required to answer any questions from agents. And DO NOT do so.
- Read the warrant and check date/time of entry allowed, places of entry allowed, what is allowed to be seized.

ICE Raid

- You will get a receipt for anythings, documents, seized. Demand one, it is the law.
- Call an attorney, but agents do not have to wait to conduct the search.
- Be polite and compliant. If asked, shut down equipment, gather employees in one place, etc.

ICE Raid

- Document everything, including where any detained employees are being taken in order to notify family/emergency contact.
- Do not agree to have your personal or company attorney/firm also represent any detained employee.

ICE Audit vs. ICE Raid

Conclusion:

- Establish protocols and make sure they are known by all.
- Conduct internal review of I-9s on a routine schedule so you know exactly what is in your files.

(Purge I-9s older than the retention period)



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