

U.S. Immigration and Customs Enforcement (ICE)

U.S. Immigration and Customs Enforcement (ICE) has been stepping up its enforcement by more than doubling the amount of investigations it was doing in 2017.

The drive is likely to continue and intensify under ICE's push for a "culture of compliance" among businesses. As part of this push, it's expected that ICE will conduct 400% more I-9 form audits this year, compared to 2017.

With President Trump's stated agenda of cracking down on immigration law breaches, employers are advised to make sure that they take extra care when vetting new hires, and also fill out I-9 forms appropriately and carefully check new employees' documentation.

ICE opened 3,510 worksite investigations in the first seven months of 2017, more than double the amount it had opened in the same period the year prior.

The agency's strategy is to focus on criminal prosecutions of employers that knowingly break the law, and to use I-9 audits to set a tone for compliance across the broad employer community.

The enforcement push is paying off for ICE. Between Oct. 1, 2017 and May 4, 2018, it initiated 2,282 I-9 audits, 60% more than it did in the same period the year prior. During that time, ICE made 594 criminal arrests and 610 administrative worksite-related arrests, a fourfold increase from the entire 2017 fiscal year.

ICE's ultimate goal, if it can secure funding and support from the Trump administration, is to open as many as 10,000 to 15,000 audits a year. It hopes that by stepping up enforcement it can give employers a "reasonable expectation" that they will be audited at some point.

WHAT SHOULD YOU DO?

The agency has stated that it aims to audit companies throughout the country, regardless of location, industry or employer size – meaning even small employers are in the crosshairs.

With the writing on the wall, you should:

- Review your I-9 files.
- Review your I-9 compliance processes.
- Train your hiring personnel on proper I-9 verification.
- Correct any compliance deficiencies that you identify.
- Ensure that your workers understand their rights if ICE visits your workplace.
- Develop policies and procedures to follow in the event of a worksite inspection, so you are prepared to assert your and your workers' rights. You may want to discuss this with your attorney.

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IF YOU ARE VISITED

- If ICE agents show up at your worksite, keep the following in mind:
- You may ask them to show their ICE IDs and ask for their names and business cards.
- If they have a search warrant, you may ask to review the warrant and you can call your lawyer if you feel the need.
- You or an authorized employee must give agents permission to enter the premises.
- If ICE agents show up, have your on-site company representative notify upper management or company officers and provide them with a copy of the search warrant. This has to be done quickly, as ICE does not have to wait for your lawyer or upper management to show up before they commence their inspection.
- If the agents demand to review your I-9 forms, they must produce a notice of inspection or an administrative subpoena. You have at least 72 hours to turn over I-9 documents.
- Given the 72-hour time frame, your on-site representative will have time to contact company officers as well as your company counsel.
- You may deny agents access to non-public areas of your property if they don't have a search warrant.
- If ICE wants to interview a company representative, they are allowed to have the company's attorney present during the session.