Immigration Inspections and Raids:

Your Rights and Responsibilities as an Employer

LCR | LAWYERS FOR CIVIL RIGHTS™

As an employer, you have certain responsibilities to ensure that your employees are legally authorized to work in the United States. Federal agencies have different ways of enforcing the laws that require legal authorization to work. This resource guide outlines the basic rights and responsibilities that you have as an employer.

If Your Business Is Raided:

- During ICE raids, agents may appear at a worksite without warning as part of an investigation into an employer.
- Contact an attorney. If you need assistance with finding an attorney who has experience with workplace raids, contact **Lawyers for Civil Rights** by emailing justice@lawyersforcivilrights.org
- Ask to see a warrant. If they don't have a warrant, you don't have to let them in.
- Check the warrant. Look for these things:
  - Is it signed by a judge or magistrate?
  - Is the business information listed in the warrant accurate like the business name or address?
  - What is the scope of the warrant?
  - Does the warrant specify any time period or business hours within which the search must be conducted?
- If law enforcement enters your business without a warrant, tell them you do not consent.
- ICE may enter public areas, but not areas closed to the public. Business owners should designate "private" space as appropriate based on needs and operations. This should be done with visible and prominent signage.
  - For example, the lobby or reception area of a business may be public, but some work spaces or offices may be "private." To enter "private" work spaces, ICE would need consent or a search warrant signed by a judge.
  - Staff should be trained to understand what spaces are public versus private.
  - Staff should also understand who can consent or authorize access to private spaces. If this function can only be performed by senior management, that policy should be clearly communicated and enforced.
- Record with your phone, take photos, and write down everything you remember (e.g., badge and car numbers) so you can file a complaint with the proper authorities. Look for these things:
  - Did they enter private areas without authorization?
  - Are they using excessive force?
  - Are they discriminating in any way (for example, detaining only people of color or only questioning non-English speakers)?
- Exercise your right to remain silent. Because there is a risk of potential criminal liability, do not make any statements to ICE agents without an attorney present, and do not sign any documents without having them reviewed by an attorney.

Form I-9 Audits

A key document that the federal government uses to enforce laws regarding legal authorization to work is Form I-9. If you have employees, you are likely familiar with this form already.

FORM I-9 BASICS AND BEST PRACTICES

- Form I-9s are used during the hiring process to verify employees' identity and authorization to work in the United States. Valid Form I-9s are required for every person who is hired for employment in the United States. Form I-9s are not required for independent contractors or individuals who do not work in the United States.
- Employers are required to keep Form I-9s on file for every employee who is on payroll (or otherwise receiving some form of compensation for their work). The forms must be kept for three years or for one year after the employee's employment ends, whichever comes later.
- Note: A calculator employers can use to determine how long you need to keep employees' I-9 forms is available here.
- Store Form I-9s and supporting documents in a secure location (physical or electronic) that is **separate from employees' personnel records**. The forms should be in a file that is locked or password protected.
- Limit access to Form I-9s to senior management.

Employers' Rights:

- You have the right to consult with an attorney.
- You are not required to consent to a Form I-9 inspection without a **Notice of Inspection**.
- You are entitled to at least three business days' advance notice of the Form I-9 inspection, unless ICE has a civil or criminal **search warrant**.
- You are not required to waive the three-day notice period. Take the time to get your records in order.
- You can (and should) retain copies of all Form I-9s and supporting documents submitted in response to an inspection for your files.
- You may inform employees from whom you are seeking additional documents or information that your request is being made in connection with a response to an audit.
- If you are issued a Notice of Technical or Procedural Failures after a Form I-9 inspection, you may have ten business days to fix the technical or procedural mistakes.
- If you are issued a Notice of Intent to Fine after a Form I-9 inspection, you are entitled to request a hearing before an administrative law judge but must make the written request within 30 days of your receipt of the Notice of Intent to Fine.
- You cannot be fined for substantive violations on a Form I-9 that you are no longer required to maintain in your records (for example, Form I-9 for a former employee who left your business 5 years ago).

Federal agencies may conduct a "Form I-9 Inspection" of an employer. In an inspection, federal agents may come to your offices and ask to see I-9 forms for your employees. This type of inspection typically starts with a written notice, and 3 days advance notice is generally required.

Who Conducts Form I-9 Inspections?

The federal agencies authorized to conduct Form I-9 inspections are:

- The U.S. Department of Homeland Security (which includes U.S. Immigration and Customs Enforcement ("ICE"))
- The U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section
- The U.S. Department of Labor (the Wage and Hour Compliance Program and the Office of Federal Contract Compliance Program)

In the Event of a Form I-9 Inspection:

- Contact an attorney. If you need assistance with finding an attorney who has experience with I-9 audits, contact Lawyers for Civil Rights at justice@lawyersforcivilrights.org.
- Review the Notice of Inspection to confirm what they are allowed to inspect.
- Gather and provide only the Form I-9s and supporting documents specifically requested.
- Make copies of all Form I-9s and documents submitted in response to the inspection.

Potential Outcomes of I-9 Inspections:

- **Notice of Inspection Results:** This form of notice informs an employer that it is in compliance with employee eligibility verification requirements.
- **Notice of Suspect Documents:** This form of notice informs an employer that the documentation presented by an employee either does not relate to the employee (is someone else's document) or is otherwise invalid. This notice may also inform an employer of potential criminal and civil penalties if the employer continues to employ unauthorized workers.

- Note: If the employer or the employee believes the findings reflected in a Notice of Suspect Documents are an error, the employer and the employee may have an opportunity to provide documentation of valid work authorization. Employers that receive a Notice of Suspect Documents should expect follow up to see if the employee is still employed. See *Immigration Employment Compliance Handbook* (October 2024 Update), Chapter V, §5:16.

- **Notice of Discrepancies:** This form of notice informs an employer that Homeland Security has not been able to determine an employee's eligibility to work in the United States.
  - Note: If you receive this notice, you should give the employee a copy of the notice and an opportunity to provide additional documentation establishing authorization to work in the United States. "Employers should not terminate or suspend employees without providing them with notice and a reasonable opportunity to present valid Form I-9 documents." See *Immigration Employment Compliance Handbook* (October 2024 Update), Chapter V, §5:15.
- **Notice of Technical or Procedural Failures:** This form of notice identifies technical or procedural errors found in the inspection of an employer's Form I-9s. (For example, the form is not signed or dated properly)
  - Note: An employer that receives this notice generally will have at least ten business days to make corrections to the Form I-9s. Once the correction period ends, the employer will be held responsible for substantive failures for any errors that were identified in the Notice but not corrected. The ten-day correction period will not be available to an employer that commits the same errors identified in the Warning Notice (see below).
- **Warning Notice:** This form of notice is used when the Form I-9 inspection results in identification of substantive failures and where there is an expectation that the employer will comply in the future.
- **Notice of Intent to Fine:** This form of notice may be issued where the Form I-9 inspection uncovers substantive failures, uncorrected procedural or technical failures, or where the employer knowingly hires or continues to employ individuals who are not authorized to work in the United States.
  - Note: An employer that receives this notice may request a hearing before an administrative law judge within 30 days of receipt of the Notice of Intent to Fine and may request an opportunity to engage in settlement negotiations with Homeland Security. If the employer does not submit a written request for hearing in a timely manner, Homeland Security will issue a Final Order.

Potential Consequences of Violations:

- Monetary fines
- Civil and criminal penalties
- Cease and desist orders
- Debarment from federal contracting

Additional Resources re: I-9 Requirements and Audits

- Handbook for Employers: www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274
- Form I-9 Inspection: www.ice.gov/factsheets/i9-inspection
- Form I-9 Audit Best Practices Checklist (attached)
- I-9 Central: www.uscis.gov/i-9-central

Additional Resources re: Internal I-9 Audits (Self-Audits):

- Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits: www.ice.gov/doclib/guidance/i9Guidance.pdf
  - Note: This guidance is slightly outdated. The American Immigration Lawyers Association's Verification & Documentation Committee is working with the Department of Homeland Security to have them update this guidance.
- Self-Audits and Correcting Mistakes: www.uscis.gov/i-9-central/completing-form-i-9/self-audits-and-correcting-mistakes

Additional Resources re: ICE Raids

- www.immigrantdefenseproject.org/raids/
- www.immigrantdefenseproject.org/raids-toolkit/
- www.nilc.org/resources/a-guide-for-employers-what-to-do-if-immigration-comes-to-your-workplace/

Get free legal help with immigration issues on the Immigrant Defense Hotline:

(617) 988-0606