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Employer Resources for Addressing ICE Presence

Among a flurry of reports of U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“Border Patrol”) officers in the Kern County area, by multiple news outlets and on social media, employers should be prepared to address employee concerns and to address potential ICE and Border Patrol presence at their worksites. Although the reports indicate that this was a targeted operation aimed at drug smugglers, which resulted in officers taking several individuals into custody, tensions are understandably high.

Employers can take steps now to provide support to employees who may have concerns. Although employers generally have limited options for providing support, employers can inform their employees about the employer’s policies for responding to ICE or Border Patrol visits and remind employees that scammers are looking to take advantage of this current tense environment. Remind employees to always ask for proper identification when approached by or contacted by anyone purporting to be a law enforcement officer. In recent years, the Border Patrol has issued warnings that scammers are posing as Border Patrol officers and promising money for information, threatening legal action and demanding personal information. There is a higher risk of individuals falling for a scam when there is identifiable ICE and Border Patrol presence in the area. We have linked some of the past Border Patrol warnings at the end of this article.

Employers can consider providing general information to employees about resources that provide immigration services for “friends and family” who may have concerns, rather than providing it to specific employees. Do not provide assistance in the form of funds or direct referrals to immigration service providers for any employees who have given you knowledge about their lack of work eligibility. Employers may consider providing a leave of absence for “personal reasons” to employees that express a need for time off to address their own eligibility or that of a family member. However, employers should be cautious in offering support to specific employees as there are serious consequences beyond knowingly employing an illegal alien when an employer takes it a step further and provides direct assistance to an employee. It can be difficult to disengage once the employer offers support and gets involved in a very private issue which has serious consequences for all those involved.

In addition to discussing issues that may arise outside of the work environment, employers should ensure that the supervisors and employees are prepared to respond in the event of ICE or Border Patrol officer presence near or on the work-site.

- Train employees to refer inquiries from ICE agents to the management representative that is responsible for I-9 compliance, etc. preferably someone in upper management or human resources.

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- Remind employees about your visitor policy, including that employees should notify their supervisor if they notice non-employees lingering on or near the worksite.
- Remind your staff to be polite but to always ask for proper identification and to take a business card, photo of a badge, etc.
- Keep in mind that while employers cannot knowingly employ someone that is not authorized to work in the U.S., employers cannot discriminate against employees on the basis of their nationality, citizenship status or that of the employee's friends or family.
- When there are reports of ICE or Border Patrol officer presence near the worksite, expect employees to call out "sick" or request an absence. Treat these as you would any other absence and do not assume that such action on behalf of an employee is due to their citizenship status; many employees are fearful of being mistakenly detained, fearful of law enforcement officers or worried of false rumors about their status if others see them stopped by officers.
- If officers inquire about a specific employee, consider having the employee brought to the office rather than sending the officers to the field or work location which could lead to other collateral arrests.

Remember that just because someone is stopped, questioned or detained is not definitive of their citizenship or work eligibility and employers should use caution to avoid discriminatory conduct.

What This Means for Employers:

Employers should be prepared to address employee concerns regarding immigration compliance and the law enforcement presence this week. Employers can provide reassurance to employees that they will not be discriminated against for expressing their concerns and employers can explain the process for addressing officer presence near or on the work site. Employers should also take this time to ensure that it is properly implementing its I-9 process and that it is prepared in the event of an ICE request. Employers interested in conducting an in-house I-9 audit can contact their trusted legal counsel for guidance on that process.

Employers can review previous guidance from the Border Patrol regarding scams here:

<https://www.cbp.gov/newsroom/local-media-release/cbp-warns-phone-scam-continues-target-citizens>

<https://www.cbp.gov/newsroom/national-media-release/cbp-warns-against-phone-scams>

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.