

What to Do If ICE Comes to Your Workplace?

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Proactive Steps Employers Can Take To Prepare For an ICE Visit

With the return of more aggressive immigration policies under the administration of President Trump, now is a critical time for employers to ensure they are in compliance with immigration laws and have taken steps to protect their workplace from raids by the U.S. Immigration and Customs Enforcement ("ICE"). ICE enforcement operations are unpredictable and challenging for businesses and employees alike. ICE can come to the workplace as part of a raid, an immigration audit, or to detain specific people. Proactive preparation is the most effective way to navigating an ICE workplace visit.

To prepare for a potential ICE workplace visit, companies should adopt a written ***ICE Workplace Visit Response Protocol ("Response Protocol")*** that outlines steps to follow if ICE agents arrive. Employers should also have designated points of contact to administer communication with ICE agents during a visit. Employees should be trained to say, "I can't give you permission to enter. You must speak with my employer." Employees should provide no further information and remain silent in the event of questions or requests from ICE agents. Staying silent and asking for an attorney is the best way for workers to protect their rights especially as any information given can be used against a worker at a later time.

Companies can further protect their business and employees by designating private areas within the workplace. ICE agents cannot lawfully enter private areas without obtaining a judicial warrant signed by a state or federal judge. ICE agents will often present [administrative warrants](#) with the heading "U.S. Department of Homeland Security" as evidence of their authority to enter private areas. But administrative warrants are not issued by a court or signed by a Judge, and they do not allow immigration agents to enter private areas without the consent of the authorized employer representative. Employees should never provide consent for agents to enter private areas without a judicial warrant. Companies should label private areas of the workplace with signs stating "employees only" or keep private areas locked from public access. Doing so will ensure ICE agents cannot lawfully enter private areas of the workplace without consent.

Although ICE agents cannot enter private areas without a judicial warrant or consent, they can freely enter public areas such as parking lots, lobbies, shopping areas, or dining areas. If an agent is attempting to enter a private area, the employer's designated ICE point of contact ("POC") should ask to see a copy of the warrant to verify whether it is a judicial warrant, signed by a judge, and states "U.S. District Court" or the name of a state court at the top. If the agents do not present a valid judicial warrant, the employer POC should inform the agents that the employer does not consent to the agents entering private areas of the workplace.

In addition, it is highly recommended that companies provide ***Know Your Rights trainings*** to employees and staff, with a particular emphasis on the rights of employees during an ICE worksite raid or encounter. ICE agents do not always have a right to enter your workplace, stop or arrest workers, or take documents. Know Your Rights trainings can provide employees with important information about their rights and the “do’s and don’ts” during an ICE raid. These rights include the rights to remain silent, speak to a lawyer, and refuse to answer questions. Employees should also be trained not panic or try to flee during a raid because doing so could give ICE legal reason to suspect the employee is present in the United States in violation of immigration law, which would provide legal justification for ICE to arrest the employee. Staying calm and remaining silent during an ICE encounter is critical.

Company response protocols should also include guidance for documenting key information during and immediately following a raid. Key details include the number, names, and badge numbers of agents involved, their attire and visible weaponry, whether they constricted movement, and any mistreatment. Response protocols should also include a requirement to notify the employees union or representative if there is an ICE raid. If ICE arrests any employees, the company’s designated ICE POC should ask the ICE agents where they are taking the employee, because this information will assist families and attorneys to locate them.

Finally, companies should practice response protocols with employees and staff to ensure readiness for possible ICE visits. Conducting response protocol drills can ensure that employees, staff, and employer’s designated ICE POC are fully prepared in the event of an ICE raid.

Being prepared for an ICE raid can protect both your business and your employees. Kelley Drye can assist with preparation of a response protocol as well as trainings for employees and staff. For questions regarding ICE workplace visits or any other immigration related matter, contact Kelley Drye partner Matt Luzadder at mluzadder@kelleydrye.com.