

ICE Raids of Workplaces for Undocumented Workers: What Employers Should Know

Lawrence Lee provides guidance for employers—especially contractors and subcontractors—on how to proactively comply with immigration laws and prepare for potential ICE workplace raids. Legal counsel, internal audits, and proper documentation are imperative to reduce liability and protect against significant fines and criminal penalties.

FULL STORY

Denver, Colorado – In the present era of intensified enforcement against undocumented immigrants, employers, in particular general contractors or subcontractors, must be vigilant to avoid unannounced raids in the workplace, arrest of immigrant workers, and imposition of severe penalties against employers. The federal governmental agency in play is the U.S. Department of Homeland Security, which oversees the U.S. Citizenship and Immigration Services as well as the U.S. Immigration and Customs Enforcement (ICE). Lawyers for employers play a crucial role in advising and guiding businesses towards compliance and avoiding trouble. When a company is contacted by the federal government on an I-9 audit, employment counsel should be retained to either negotiate or litigate for the final decision-makers. Early preparation for the audit by forming a written workplace policy and procedure will likely protect employers from audits by ICE or delegated agencies as well as provide a strong defense if charges and major penalties are imposed against a company.

Initiative-taking Compliance Measures

The U.S. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRIRA) incorporated Section 287(g) into the Immigration and Nationality Act (INA) by authorizing ICE to delegate to state government and local law enforcement officers the authority to perform specific immigration officer functions under the agency's direction and

oversight. Section 287(g) is designed to remove “criminal aliens” who are eligible to be transported out of the U.S. As of May 14, 2025, 40 states have signed Memorandums of Agreements (MOAs) for Section 287(g) program enforcement.

To prevent risk of liability, employers should contact their employment attorney to provide advice and counsel on compliant preventative measures relating the hiring of undocumented workers either directly or indirectly through sub-contractors. Such measures include:

- **I-9 Compliance:** Ensuring accurate completion and retention of Form I-9 for all employees, verifying their authorization to work in the U.S. to shelter employers from liability if audited;
- **E-Verify Enrollment:** Advising on the use of E-Verify, especially for federal contractors, to confirm employment eligibility electronically;
- **Policy Development:** Creating clear hiring policies and training HR personnel to recognize and address potential issues; AND
- **Subcontractor Liability:** Understanding the liability associated with hiring a subcontractor who falls into high violation rates and including protective language in subcontract agreements.

When an employer ends up in an impractical circumstance, these measures may help mitigate enforcement and penalties by demonstrating good-faith efforts to comply with immigration laws.

Preparing for ICE Raids

Raids by ICE are usually triggered by complaints, information provided by other governmental agencies, or ICE’s own investigatory and enforcement activities in the form of I-9 audits. For example, in Colorado, as one of the 40 states that is part of the MOAs for Section 287(g), ICE recently imposed over \$8 million in fines to three Denver businesses for employing undocumented workers.

Well in advance before a raid would take place, employment counsel can immediately conduct its own internal audit, provide advice, and help prepare Companies that employing its own or subcontract with another business that employs immigrant workers by:

- **Reviewing, Drafting or Amending Written Agreements** that include protective language addressing undocumented workers that may be employed by another subcontractor or party;

- **Developing Response Plans** and confirming protocols for handling ICE inspections, including designating points of contact and legal representatives;
- **Designating Point Person(s)** to be educated and trained on handling a potential raid by ICE; AND
- **Ensuring that Legal Representation** is contacted promptly during a raid to protect the company's interests and assisting in the preparation of public access and audit company files in the event of a I-9 audit.

Worker Seizing Process and Employer Liability

The process for seizing undocumented workers in the workplace by ICE includes a combination of investigation, warrants, and raids. During an I-9 audit or raid, workers can be arrested, seized, and transported by ICE. Employers have rights and responsibilities if contacted by ICE on its premises or out in a work field, including the right to refuse entry without a warrant. An employer that is found to have knowingly hired undocumented workers is subject to significant civil fines, criminal charges, and potential debarment from government contracts. Contractors using subcontractors may be subject to civil and criminal liabilities. An affected company should request its employment attorney to:

- **Review All Relevant Written Agreements** between developers and general contractors, contractors and subcontractors, all employment agreements, and contracts for potential liabilities;
- **Investigate ICE's actions and claims** including the review of the factual evidence to challenge the basis of the charges;
- **Negotiate the Penalties**, if allowed, by engaging with the government to reduce fines, avoid criminal charges;
- **Provide Litigation Support** to represent the employer in administrative or court proceedings, as necessary;
- **Evaluate other risks**, including potential breach of contract claims by developers, general contractors, subcontractors and other contracting parties; AND
- **Discuss funding sources for defense**, including through employer practices liability insurance, which may provide coverage and reimbursement should an employer get served with civil or criminal immigration charges.

Legal representation, advice, and counsel are vital to navigate the complexities of immigration enforcement actions and protect the business' reputation, operations, and

financials while also neutralizing or mitigating sanctions issued by the federal and/or state governments and potential future civil claimants.

Conclusion

Employment lawyers are indispensable allies for companies aiming to comply with immigration laws and prepare for potential ICE enforcement actions, especially when a business had no knowledge of an undocumented workforce. Expertise in compliance, preparation, and defense helps safeguard companies from significant monetary penalties and operational disruptions, including negative reputation issues if an ICE raid is published on main or social media sites. Ultimately, employers that are directly or indirectly involved with undocumented workers may have to make tough decisions to comply or risk penalties imposed by the federal government.

Lawrence Lee, Attorney & Shareholder

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