

HR COMPLIANCE OVERVIEW

Best Practices for Preparing for Immigration Raids

The federal government has recently increased its immigration enforcement efforts. This trend will likely continue in the foreseeable future, increasing employers' potential risk of being subject to worksite enforcement action. These enforcement actions disrupt an employer's business operations and carry consequences, including civil and criminal penalties. Establishing best practices to prepare for these enforcement actions can help employers reduce their potential legal risks and minimize disruptions.

The following are effective practices that can help employers prepare for potential immigration raids:

- Ensure compliance with immigration laws; and
- Establish a rapid response plan.

This HR Compliance Overview provides employers with best practices for preparing for immigration raids.

ACTION STEPS

Employers should carefully consider their obligations and potential legal or business risks when implementing new workplace practices. This Compliance Overview provides best practices for employers to prepare for immigration raids.

Highlights

Employers can consider the following practices to help prepare for immigration raids:

- Ensure compliance with immigration laws; and
- Establish a rapid response plan.

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Overview of Federal Immigration Laws and Enforcement

The Immigration Reform and Control Act (IRCA) prohibits employers, regardless of size, from knowingly hiring or continuing to employ an individual who is not authorized to work in the United States. This law also prohibits employers from hiring any individual, including a U.S. citizen, without verifying their identity and work authorization. The IRCA imposes strict penalties on those who knowingly employ immigrants lacking permanent legal status. To enforce these guidelines, the IRCA requires employers to verify a newly hired employee's eligibility to work in the United States by completing and retaining the Employment Eligibility Verification form (Form I-9). Employers must have a completed Form I-9 for every employee hired after Nov. 6, 1986. By completing this form, employers certify that they have inspected documents verifying that a newly hired employee is authorized to live and work in the United States.

The federal government has increased its enforcement efforts to identify and prosecute employers who violate the IRCA, believing illegal immigration can be reduced by actively targeting employers who employ individuals unauthorized to work in the country. Each year, the federal government recovers millions of dollars in fines and citations for IRCA violations. As a result, employers are forced to deal with more federal immigration enforcement actions and, in some cases, criminal arrests and convictions.

To enforce immigration laws in the workplace, the federal government may take certain actions. The most common enforcement actions include:

- U.S. Immigration and Customs Enforcement (ICE) worksite enforcement actions (commonly referred to as immigration raids);
- U.S. Citizenship and Immigration Services (USCIS) on-site inspections; and
- Form I-9 audits.

ICE immigration raids enforce federal immigration laws by locating and detaining individuals unauthorized to work in the country. Worksite enforcement actions may be initiated in response to reports of fraud, misuse of visas, human trafficking, and other forms of exploitation and abuse. These actions may also result from random or targeted audits or referrals from other government agencies—such as the U.S. Department of Labor (DOL) and the IRS—that discover issues during their normal activities.

Immigration raids are typically unannounced and often involve immediate on-site inspections and potential detentions of individuals who are unauthorized to work in the country. During a raid, ICE agents search for criminal and administrative violations of employees and employers. ICE agents may question, detain and arrest workers. These raids can be disruptive to a business and carry significant legal consequences, including criminal and administrative offenses, incarceration, penalties, fines and deportations. ICE works with other federal agencies, such as the DOL, to increase enforcement actions against employers engaging in immigration violations, document fraud and other infractions.



Best Practices for Preparing for Immigration Raids

Ensure Organizational Compliance With Federal Immigration Laws

A proactive approach to complying with federal immigration regulations can help reduce the likelihood of immigration raids. Employers can implement best practices, regularly review their organization's compliance with immigration laws through internal audits, and enroll in E-Verify and other government programs aimed at enhancing compliance.

General Best Practices

Many organizations rely on the following best practices to ensure compliance with federal immigration law:

- Training employees who oversee the Form I-9 and other immigration-related processes;
- Establishing an immigration compliance policy;
- Prioritizing and completing periodic internal Form I-9 and other immigration-related documentation audits;
- Consulting with an attorney for guidance addressing immigration challenges;
- Supervising employee completion of Section 1 of Form I-9;
- Copying and storing immigration documents and forms;
- Correcting errors promptly and documenting all actions taken when making corrections;
- Tracking expiration dates for employee reverification;
- Storing immigration documents properly;
- Using electronic verification software for creating, managing and storing Forms I-9; and
- Enrolling in E-Verify.

Employers who implement these or similar measures will not only be better prepared for a worksite enforcement action, but they may also be able to reduce the time and costs spent on their Form I-9 operations and minimize any potential liability.

Internal Audits

Conducting regular internal audits of completed Forms I-9 and other related immigration documents can help employers remain compliant with federal immigration laws. Internal audits are typically the best and sometimes the only systematic means to ensure compliance with immigration laws. Both the USCIS [Handbook for Employers](#) and [I-9 Central](#) provide resources for employers conducting internal audits.

No matter how employers decide to conduct internal audits, it's important they're thorough to safeguard against any enforcement actions. Employers may consider taking the following steps while performing an internal Form I-9 audit:

- Collect all Forms I-9;
- Verify there is a completed Form I-9 for all current employees;
- Complete Forms I-9 for current employees that do not have a completed Form I-9;
- Audit Forms I-9 for current employees to ensure each section is properly completed and accurate;
- Correct errors on completed Forms I-9 for current employees;
- Audit Forms I-9 for terminated employees; and
- Document all steps taken during an internal audit in an audit log.

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During an internal audit, employers may discover errors. Employers can demonstrate their good-faith efforts to comply with federal immigration law—in the event of an enforcement action—by making a list of all errors, including Forms I-9 that contain errors. This list can identify the errors and the actions the employer took to correct them.

E-Verify

E-Verify is a free web-based system that allows enrolled employers to verify the identity and employment eligibility of their newly hired employees. E-Verify is intended to simplify the process of verifying employee identity and employment eligibility and improve compliance with federal law by quickly determining whether an employee is authorized to work in the United States. The program provides employers with training, customer support, error checking and usage reports. It can also protect employers from penalties relating to hiring workers who are not authorized to work in the country. It can be a valuable tool for helping employers verify the employability of their workers.

While E-Verify is a voluntary program for most employers, it is required for federal contractors with contracts containing the Federal Acquisition Regulation E-Verify clause. However, employers may be forced to participate in E-Verify as a result of a legal ruling. Additionally, some states require employers to use E-Verify as a condition of business licensing.

Mutual Agreement Between Government and Employers

The federal government provides employers with assistance to help improve their compliance with federal immigration law. In July 2006, ICE established the Mutual Agreement Between Government and Employers (IMAGE) program. This voluntary program assists employers with developing a more secure and stable workforce and enhances employers' fraudulent document awareness through education and training. Employers deemed IMAGE-certified can avoid lawsuits and other legal actions resulting from unauthorized employment.

Establish a Rapid Response Plan

Despite their best efforts, employers may find themselves subject to an immigration raid. Establishing a rapid response plan in preparation for an ICE immigration raid is essential for employers to ensure the safety of their workforce and compliance with legal requirements. By having a clear and practiced response plan, employers can better navigate these high-stress situations, minimize confusion, and protect their organization from potential legal or reputational damage.

A rapid response plan helps to define the roles of managers and employees during an immigration raid. During an immigration raid, both managers and employees benefit from knowing what actions to take. For workers, this may include remaining calm, knowing their rights, and alerting managers and supervisors to the situation. It's important that employers train workers who will likely encounter ICE agents first during a raid, such as receptionists and security guards, how to respond. This can help ensure that the arrival of ICE agents triggers a prompt and proper response from the organization and that the response plan is followed. Employers should also ensure that managers are prepared to communicate with ICE agents, the organization's legal counsel and employees; monitor ICE agents' compliance with warrants; track actions taken by ICE agents; and respond in a way that aligns with the organization's legal obligations.

A rapid response plan can include the following:

- **Designate a trained response team to interact with ICE agents.** A response team should include key personnel or decision-makers (e.g., HR representatives, legal counsel and security personnel) who are responsible for managing the situation in the event of a raid. The response team should be trained in immigration law and the organization's procedures and policies and be able to act quickly and efficiently in response to a raid.

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- **Establish clear communication protocols.** Clear communication must be maintained between managers, employees and the organization’s legal representatives during an immigration raid. The rapid response plan should include instructions on how employees can report a raid, how managers should inform employees and who will contact the organization’s legal counsel. Additionally, a member of the employer’s rapid response team can be responsible for communicating with ICE agents during the raid to maintain clear communication.
- **Train employees.** As part of the rapid response plan, employers may consider providing employees with information about their rights in the event of an immigration raid. Additionally, training employees on their responsibilities during a raid can help employers minimize safety and legal risks. Employees can also be trained to avoid actions that could be construed as obstructing a raid.
- **Review the search warrant.** Employers should review any search warrant presented by ICE agents during an immigration raid and provide a copy to their legal counsel as soon as possible.
- **Consider the scope of information to provide.** Employers may limit the information they provide to ICE agents to that which is required by a valid search warrant.
- **Document actions taken by ICE agents.** Properly documenting an immigration raid is essential to protect an organization and its employees. It can help identify any potential misconduct or illegal actions taken by ICE agents. However, employees should be instructed not to interfere with or obstruct a raid as they document actions taken by ICE agents.
- **Develop a communication plan.** Developing internal and external communication strategies can be vital when preparing for an immigration raid. Internal communication strategies should inform employees of the situation clearly and calmly. This can include instructions on what employees should do during and after a raid. Implementing an external communication plan can help employers manage their public image and mitigate potential reputational damage.
- **Create a business continuity plan.** The rapid response plan should address how the organization will operate after an immigration raid. This may include establishing staffing contingency plans for worker absences, rescheduling work and ensuring operations remain functional. Employers can also find ways to maintain a positive work environment following a raid to minimize further disruption to business operations. Additionally, creating a communication plan can help employers maintain their reputation and minimize their exposure following a raid.

An effective rapid response plan safeguards an organization’s reputation and helps avoid costly legal violations. It allows employers to minimize operational disruptions, enabling the organization to resume normal business activities more quickly while preserving employee morale during an uncertain and stressful time.

Employer Takeaways

Immigration raids may be a reality for some employers, especially as the federal government increases its enforcement of immigration laws. However, employers who take steps to prepare for these raids can minimize potential disruptions and remain compliant. By ensuring compliance with immigration laws, training employees and creating a response plan, employers can safeguard their organization and protect their employees’ rights. These efforts can help employers limit the potential legal exposure posed by ICE enforcement actions. Due to the legal complexities of immigration raids, employers are encouraged to seek legal counsel to discuss specific issues and concerns.