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The US government's focus on workplace immigration is increasing companies' exposure to I-9 audits and raids. Proactive policy assessments remain essential to mitigating legal and operational risk.

Key takeaways

- Companies across the US are taking increased steps to prepare for worksite immigration enforcement actions.
- Understanding notice requirements, agency authority and workplace rights is essential.
- Conducting internal audits and implementing clear response plans can help reduce disruptions to business operations.



Worksites across the US face increased exposure to immigration enforcement under US President Donald Trump's administration. As federal agencies implement Trump's immigration policies, understanding the scope of enforcement actions in the workplace – and the legal rights employers and employees have in these situations – is critical.

In preparing for potential immigration enforcement, employers should be clear about the roles of different federal agencies and the actions they may take. US Homeland Security Investigations (HSI), an arm of US Immigrations

and Customs Enforcement (ICE), may request audits of employment eligibility verification, or I-9, forms and other work authorisation documents.

HSI can also initiate and conduct worksite enforcement investigations, commonly referred to as raids.

US Citizenship and Immigration Services conducts audits of employer sponsorship of foreign workers, and state and local law enforcement agencies may assist the federal government as needed.

Cozen O'Connor partner Scott Bettridge said the extent to which employers prepare for immigration enforcement actions often depends on their industry, noting that ICE tends to target sectors that employ more foreign workers, such as agriculture and manufacturing. However, he noted that companies across all industries have shown heightened interest in enforcement readiness since Trump took office.

Conducting internal I-9 audits

This growing concern is reflected in I-9 compliance efforts, which Baker McKenzie partner Matthew Gorman said have shifted from recommended practice to necessity under current federal enforcement priorities.

Employers in certain industries, as well as those who use paper I-9 forms instead of the federal E-Verify system, may be at an increased risk of an I-9 audit. Companies will receive a notice of inspection of I-9 forms from HSI, after which they will have at least three business days to produce the requested documents.

When HSI detects technical failures, employers are given at least 10 business days to make corrections. After that, uncorrected technical or procedural failures become substantive violations, which may result in penalties or prompt further enforcement action.

At a minimum, companies should conduct internal I-9 audits every two years, Gorman said. He noted that, though “the level of enforcement has certainly changed,” the law hasn’t.

“Preparation is really the same now as it has been in other political environments. Whether employers conduct full I-9 audits or smaller test audits on random sample sizes will depend on the size of the company and its risk appetite,” Gorman said. “The process is really just about taking inventory, and it’s something that all employers should be doing.”

When internal I-9 audits reveal errors, employers must document any mistakes before correcting them. Remediation is often as simple as “holding a one-hour training for HR on how to properly complete the forms,” Cozen O’Connor’s Bettridge said.

Even if a company’s workforce is legally authorised to work in the US, employers can still face penalties of up to US\$2,861 per violation to have correctly completed the I-9 forms. To mitigate this risk, employers may supplement internal audits by participating in HSI’s IMAGE programme.

Among other things, businesses that enrol in IMAGE receive training and do not face penalties or fines for unintentional errors found during I-9 audits. Employees with document discrepancies are allowed to resubmit valid documentation to remain employed in the US.

Companies should also consider their responsibilities to their workforces during I-9 audits. Sheppard Mullin partner Jonathan Meyer noted that employers are not required to retain I-9 forms for independent contractors, but warned against misclassifying workers to “avoid the I-9 requirement.” He said that federal agents often request contractor lists to determine whether misclassification was intentional.

Some US states may soon impose additional requirements to promote employee protection. Washington and Massachusetts, for example, are considering legislation that would require employers to notify employees within 72 hours of a notice of inspection.

How can employers implement ICE raid response plans?

Unlike I-9 audits, ICE raids occur without notice, presenting greater operational risk.

Baker McKenzie’s Gorman said the biggest mistake he sees companies make when ICE – or any law enforcement agency – shows up is “not having a clear set of instructions” for employees to follow.

But “implementing a response plan is different than simply having a response plan,” Bettridge said, adding that training is key. He said that employers should clearly define which areas of the workplace are “public” and which are “private,” an analysis that often turns on public accessibility and is especially important in settings like restaurants and hotels, where the difference can be unclear. This distinction determines whether immigration agents may legally enter without a judicial warrant. Without a warrant, agents need the employer’s permission to enter private workspaces.

Fisher Phillips partner David Jones said that companies often err by failing to limit immigration agents’ activity to the scope of their warrant. Employers may decide to designate specific people to accompany or even record immigration agents when they investigate a workplace, though workers who engage with agents should take care not to volunteer information that could harm others.

The line between cooperation and unintentional disclosure can be thin. Clearly defining what workers should not do during an ICE raid is just as important as outlining what they should do, Bettridge said.

“Staff should be trained not to give immigration agents access to private workspaces. They should not answer any substantive questions or volunteer information about other employees. They shouldn’t obstruct, but they don’t need to help,” Bettridge said. “Maybe ICE listens, maybe they don’t, but having a plan in place certainly protects the company from any inadvertent disclosures that may put people at more risk.”

A comprehensive response plan does not only set out the steps a company should take during an ICE raid, but also addresses how it should proceed afterwards. The appropriate course of action will differ depending on whether workers are detained or property is damaged.

Accommodating the mental health needs of employees should be a priority after any immigration enforcement action takes place. Jones said that schedule flexibility is key and advised employers to compile a list of vetted legal resources to distribute to employees.

"Maintaining morale is important. Some employees may be afraid that they'll face retaliation because they didn't disclose where a worker was or because they strayed from the plan. Companies need to be explicit that there are no repercussions and just provide some emotional support," Bettridge said. "Clear and concise communication really reduces the stress and uncertainty for employees and can make it easier to chart a path forward."

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