# Client Alert IRCA, Federal Enforcement Efforts and Form 1-9

The recent issuance of certain Executive Orders suggests that there will be increased enforcement efforts as it pertains to immigration laws. However, it is important to note that the statutory laws pertaining to immigration remain unchanged.

**This FAQ will provide an overview of the law, how to stay complaint with the law, and how to respond to governmental enforcement efforts.**

## What is the law?

The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to knowingly hire an individual who is not authorized to work in the United States, or to continue to employ a person knowing that the person is not authorized to work in the United States. The law also requires employers to verify an employee's work authorization and prohibits discrimination based on national origin or citizenship status.

| Who is authorized to work in the US? | Enforcement agencies |
|---|---|
| Citizens of the United States<br>Noncitizen nationals of the United States<br>Lawful Permanent Residents (Green Card holders)<br>Noncitizens authorized to work (Employment Visa holders). Generally, a company will have sponsored individuals working with them on a Visa. Certain categories of Employment Visas cannot be *self-sponsored*, (e.g., the employee cannot pay for them). | Department of Homeland Security (**DHS)**<br>Immigration and Customs Enforcement (**ICE)**<br>Homeland Security Investigations (**HIS)**<br>Customs and Border Protection (**CBP)** |

## Methods of Enforcement Affecting Employers

### 1. ICE Raids

Ice raids occur when the agency has reason to believe that undocumented individuals are in your workplace. ICE may only enter private areas if they possess a judicial warrant. It is important to have a plan in place in the event that ICE shows up to the workplace. As part of this plan, there should be a designated point of contact who will be responsible for interacting with ICE agents.

**What to do when ICE Shows up to the Worksite**

***Review the Warrant Immediately***

- Determine the scope of the warrant.
  - **Judicial Warrant-** Issued by *Federal Court* **and** signed by a *Judge*. Explains access permissions, to include nonpublic areas.

- **Administrative Warrant**- Issued by DHS, ICE and CBP. Only provides access to public areas.

- The warrant must contain the Company's correct legal name and address.
- Contact immigration counsel.

***The Designated Point of Contact Should*:**

- Accompany the ICE agent,
- *Gather* the name and contact information of the agent(s),
- *Document* all areas searched and all items seized during the raid,
- *Photograph* or video record the raid if permitted,
- *Take detailed notes* of the entire process.

***Other Useful Tips***

- If Individuals are detained, get information about where they are being taken.
- Do not obstruct or interfere with the search in areas within the scope of the Warrant.
- Remind employees of their right to remain silent and their right to legal counsel.
- Do not provide false information.
- Maintain a list of employees present during the raid.
- Document any conversations or interactions with agents.
- Keep copies and receipts of all documentation provided to ICE or by ICE.
- Obtain receipts for any documents taken by ICE.
- Make sure sensitive information is kept in private areas of the business.
- Include clear signs regarding what is a private and public area of the workplace.
- Have employees update their emergency contact information.

**2. ICE Audits**

An audit is a review of a Company's Form I-9 records. To begin the audit process, a government agency will issue a Notice of Inspection.

**<u>Responding to Audits</u>**

- The employer will have three days to produce all Form I-9s as well as other documentation requested by the agency.
- Employers have the right to immigration counsel.
- Employers should keep copies of anything that is provided to the agency.

Employers should not provide access to its computer system.

## Compliance Tools

One of the most effective ways to prepare for DHS or ICE interactions is to make sure you are complying with the laws. Some tools for ensuring compliance are as follows:

**Train Staff:** All individuals who are tasked with completing Section 2 of Form I-9 should understand what it is that they are doing and why. They must understand how to complete the Form I-9 and know the timelines associated with completing Form I-9.

**Conduct Internal Audits of Form I-9s:** Reviewing the Form I-9s, and the process put in place to collect said forms, can give employers the opportunity to correct errors and identify any disconnects in processes or gaps in training. Some best practices when it comes to conducting internal audits are as follows:

- Create a process for how and when you will conduct the audits.
- Identify the scope of the audit. If you are only auditing a sampling of Form I-9s, make sure you have a process for how particular forms will be selected. You do not want to target specific individuals or groups of individuals.
- Communicate with employees and let them know you are performing an audit and what to expect.
- If you discover errors during an audit, let the employee know privately. Provide the employee with a copy of Form I-9 and any attached documentation.
- Be sure to correct deficiencies. How you will correct will depend on the specific issues. Generally, the process is to draw a line through the incorrect information, add the correct information, and date and initial the change. Only employees can correct Section 1 and only employers can correct Section 2. Be sure not to back date forms, erase forms, and conceal mistakes.
- Do not discriminate.
    - Always consider the timing and scope of the audit.
    - Make sure you conduct audits in accordance with your processes and procedures.
    - Always allow employees to choose which documents to submit from the list of acceptable documents. Do not demand specific types of documents.
    - Do not ask for more documentation than necessary.

If you need help better understanding how to complete and retain Form I-9, **reference our I-9 Overview,** or reach out to your Engage Human Resources Consultant.

**Please reach out to your Engage HR partner if you have any questions concerning this alert or other HR-related matters.**

## Resources

1. https://www.uscis.gov/humanitarian/temporary-protected-status
2. https://www.uscis.gov/i-9-central
3. https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274
4. https://www.uscis.gov/eadautoextend