

CLIENT ALERTS

Protecting Your Workplace: Employer Rights & Obligations During an Immigration Raid

Client Alert

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The evolving political climate has led to an increase in immigration enforcement actions, including workplace raids and audits. It is crucial for employers to understand their rights and obligations to ensure compliance with the law while protecting their employees.

Planning Ahead

Develop a Written Plan

- Create a comprehensive workplace plan detailing steps to follow in case of a U.S. Immigration and Customs Enforcement ("ICE") raid.
- Conduct regular training sessions so employees understand their rights and responsibilities.
- Designate a main company contact to handle ICE interactions and direct agents accordingly.

Know Your Legal Resources

- Provide employees with a list of legal service providers offering free or low-cost immigration advice.
- Inform employees of their right to remain silent and to request an attorney if questioned by ICE.
 - But, do not direct your employees not to cooperate with ICE/answer their questions. It is the employee's choice.

Legal Counsel & Preparedness

- Contact legal counsel immediately upon learning about an impending raid or audit.
- Establish procedures for reviewing ICE warrants before allowing access to any non-public areas of the business.

Related People

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Understanding ICE Authority

Public vs. Private Areas

- ICE agents may enter **public areas** (e.g., lobbies) without permission.
- **Private areas** require a judicial warrant signed by a U.S. District or State Court judge.
 - The warrant must specify the search location, items or individuals sought, and the raid must occur within the timeframe established by the issuing judge.
 - Employers have the right to review the warrant for accuracy (e.g., correct address and validity).
 - If the warrant does not meet legal requirements, officers cannot conduct a search without permission.
- Administrative warrants (e.g., DHS Forms I-200 or I-205) **do not** authorize entry into private areas, and officers cannot enter these areas with an administrative warrant unless granted permission.

Steps to Protect Private Areas

- Mark private areas with **"Private" signs** to clearly designate restricted access.
- Keep doors closed or locked to prevent unauthorized entry.
- If ICE attempts to enter a private area without a judicial warrant, inform them that they **do not** have permission to enter.

During the Raid

Review & Monitor ICE Activity

- If ICE presents a valid warrant:
 - Note the timeframe and scope of the search.
 - Monitor agents to ensure they do not exceed the warrant's limits.
 - If agents go beyond the warrant's scope, verbally object and document any violations.
- Protect documents covered by **attorney-client privilege** and, if agents wish to examine them, request that attorney-client documents not be inspected until you are able to speak to your attorney.
 - If ICE agents take privileged documents, document what was taken and take photos if possible.

Information for Employees During a Raid

- Employees should **not** run away, as this could give ICE a legal basis for arrest.
- Employees are **not required** to hand over IDs or immigration documents.

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- Employees have the right to remain silent and request an attorney.
- Any information shared with ICE can be used against the employee later.

Detentions

- Employers must comply with **valid judicial warrants**.
- If ICE presents an **administrative warrant**, employers:
 - **Are not required** to inform ICE if the employee is present.
 - **Are not required** to lead officers to the employee.
 - Should remind employees that they have the right to remain silent and request legal representation.
- If an employee is detained, ask ICE where they are being taken so their attorney and family can locate them.

After the Raid

Document the Incident

- Record details of ICE activity, including:
 - Number of officers present
 - Areas searched
 - Whether officers were in uniform or armed
 - Whether employees were prevented from leaving
 - Any instances of mistreatment
- Preserve any **surveillance footage** of the raid.
- Notify the employees' **union** if applicable.

By being prepared and informed, employers can better navigate immigration enforcement actions while ensuring compliance with the law and safeguarding employee rights.

Please contact the author of this Client Alert or your Butzel attorney for more information.

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