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Legal issues for employers arising out of ICE raids

In June 2025, ICE raids intensified across California as the DOJ escalated immigration enforcement efforts. Employers must understand their rights under federal law and California's AB 450 to avoid criminal liability and respond appropriately to ICE inspections.

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In June 2025, ICE raided job sites throughout California, and President Donald Trump called in the National Guard. The Department of Justice announced illegal immigration to be a top enforcement priority, and reassigned attorneys and agents to arrest and prosecute these cases.

Approximately one-third of the FBI's resources are now being devoted to immigration-related offenses, according to Reuters. (And the DOJ is aggressively going after, and threatening to go after those who stand in the way. This includes judges, political leaders and employers.)

Employers need guidance on how to behave if and when ICE comes knocking at the door. The starting point is to understand what laws may apply and what rights you have. We start with federal criminal statutes, constitutional rights, and protections created by a California statute, AB 450. This background informs of steps that employers can take to prepare for the possibility of an immigration enforcement action against them.

The criminal laws

Prosecutors rely on several federal criminal statutes to prosecute immigration cases set forth under Title 8 (immigration), Title 18 (general criminal), and Title 26 (tax).

The primary statute targeting the employment of illegal aliens is 8 U.S.C. § 1324a. Section 1324a contains civil and misdemeanor criminal penalties for employers who hire, recruit, or refer (for a fee) an undocumented worker if the employer knows of that individual's undocumented status.

It is a defense if the employer has complied in good faith with the statute's employment verification system requirements. Good faith can be established by the use of the Employment Eligibility Verification Form I-9 and reviewing the form of identification submitted by the employee for proof of authorization to work.

In order to build its case, the Department of Homeland Security typically conducts what is referred to as an I-9 audit, where it analyzes the employer's compliance with the form's requirements. Sometimes DHS agents execute search warrants to gather these and other employment documents. Before the current administration, and absent aggravating circumstances, these types of cases against employers were typically resolved through civil monetary penalties (of up to $1,000 for each undocumented worker).

Prosecutors can also charge the more serious, felony offense of knowingly or recklessly harboring or shielding from detection an undocumented worker, in violation of 8 U.S.C. § 1324 (a) (1) (A). The penalties for a violation of this statute can be up to ten years in prison for any person who harbors an undocumented worker for "the purpose of commercial advantage or private financial gain." 8 U.S.C. § 1324 (a) (1) (B).

For example, in February of this year, the owners of a Texas restaurant were charged with harboring undocumented workers after federal authorities found eight undocumented workers living in a room in the same shopping center where the restaurant was located. The restaurant owners' charges came just a month after ICE agents had raided the restaurant in search of undocumented workers.

In addition to the immigration-related crimes set forth in Title 8 of the U.S. Code, prosecutors sometimes charge more general crimes set forth in Title 18. 18 U.S.C. § 1001 provides felony penalties for making a false statement or a false writing to any federal official.

For example, if during a raid, a manager lies to ICE agents about the status of or whereabouts of an undocumented worker, the manager could be charged under Section 1001. Similarly, Title 18 contains obstruction offenses. 18 U.S.C. § 372 prohibits two or more individuals working together to impede or injure a federal officer.

Recently, the California President of the Service Employees International Union, David Huerta, was arrested under this statute for his actions during an ICE raid that, in the government's view, impeded the work of the ICE agents carrying out the raid.

18 U.S.C. § 1546 prohibits accepting a fraudulent work permit knowing it to be forged. 18 U.S.C. § 1512 punishes tampering with a witness as well as destroying or altering evidence. Thus, even if the employer has not knowingly violated an immigration statute, if management is not careful, its actions can be charged under more general criminal statutes.

Finally, Title 26 contains criminal tax penalties for immigration-adjacent offenses such as falsifying employment tax documents (quarterly tax returns and Forms W-2) and failing to withhold wages/pay employment taxes for those who are paid under the table. *See* 26 U.S.C. § 7202 (punishing as a felony employers who willfully fail to collect, account for, and pay over any employee withholdings or associated employment taxes).

Recently in Florida, two individuals were charged with running an illegal off-the-books cash payroll system, which was allegedly designed to facilitate cash payroll for undocumented construction workers but had the effect of allowing employers to avoid paying employment taxes to the IRS.

Assembly Bill 450

State law cannot supersede federal law. But California Assembly Bill 450 (AB 450) prohibits employers from doing more than what federal law requires. Under California law, an employer cannot give ICE agents "voluntary consent" to enter "any nonpublic areas of a place of labor," unless all of the following conditions are met:

(1) employees are not present in the nonpublic area; (2) the agent is taken to the nonpublic area for the purpose of verifying whether the agent has a judicial warrant; and (3) no consent to search the nonpublic area is given in the process.

In other words, if ICE agents lack a warrant, employers are not allowed to let them search nonpublic areas of the workplace. An employer can cite to this law as the reason for denying access to restricted parts of the job site, which reduces the awkwardness of telling federal agents, "No."

Employers are also not permitted to provide "voluntary consent" to an ICE agent "to access, review, or obtain the employer's employee records," unless one of the following exceptions apply: (1) the agent provides a subpoena for the records; (2) the agent provides a search warrant for the records; or (3) the records are I-9 Employment Eligibility Verification forms and other documents that are requested in a Notice of Inspection issued under federal law.

Practical tips

Employers should consider the following suggestions for dealing with law enforcement during an investigation:

Be proactive: Make sure your employment documents are in order and properly secured. If there is missing or incomplete paperwork, try to fix the problem. Make sure that you and your staff understand what to do if federal agents show up.

Know your rights: You have the right to understand the legal basis for the agents' presence at your location. If they are there pursuant to a warrant, you have a right to examine the warrant to ensure that it is issued by a judge and is being executed at the correct location and at the correct time. Following the search, you are entitled to an inventory or receipt of the items that the agents seized. You do not need to answer any of the agents' questions. You should request permission to inform your employees that they can choose whether to talk to the agents or not — but you need to be careful not to instruct your employees not to talk to the agents.

Know your employees' rights — and make sure they do too: Like you, they have the right to remain silent and the right to have an attorney present before they are questioned. You can request that company counsel be present for any law enforcement interviews; federal agents may or may not agree to this. Depending on the circumstances, as their employer, you could offer to provide separate counsel for employees. Sometimes agents will ask individuals to stand in groups according to their legal status. Your employees do not have to move into a particular group and are free to remain in their original location or congregate in an area not designated for a particular group. Just as they are not required to answer any questions, they are also not required to produce any identity documents, such as their identification, passport or work authorization permit.

Make a plan: Designate one individual (typically an owner or manager) as the point of contact with law enforcement. This individual should understand the rights of the company and its employees, as described above, and should attempt to control the situation by doing the following:

(1) Inform company leadership and, if possible, company counsel of the raid;

(2) Ask the lead federal agent whether some or all of the employees are free to leave — if so, dismiss any non-essential employees; instruct employees that, while it is their decision, they have no obligation to speak with the agents;

(3) Identify and communicate with the lead federal agent regarding the scope of the search warrant, if any, and review the warrant to make sure it properly identifies the business location and places to be searched;

(4) Inform the lead federal agent that only the manager-in-charge and/or the owner are authorized to consent to searches beyond the scope of the warrant;

(5) If the federal agents do not have a search warrant, tell them that they are permitted to be present in public areas of the business but that, under California law, AB 450, the employer (and its agents) are prohibited from giving the agents "voluntary consent" to go to "any nonpublic areas of a place of labor," unless certain exceptions are met. If possible, confirm this in writing to the lead agent and/or prosecutor;

(6) Ask the federal agent for permission to document, by video or by taking notes, the agents' conduct during the search (where they searched, who they spoke with, what questions they asked, what they took);

(7) Where applicable, advise the agents of the existence of attorney-client privileged material in the contents of the items that they are searching, and object to a search or seizure of that material;

(8) For documents or items that agents wish to seize that are essential to the operation of the business, inform the agents of your request to make copies of or otherwise retain such items, and explain the reasons for that request;

(9) After the search, request an inventory of the items seized and conduct your own accounting of items seized. Ensure that all areas of the business are properly secured.

Management should be encouraged to lodge objections to agents' conduct where it appears improper, ask questions of the agents, and document the agents' actions. Again, company personnel must refrain from physically obstructing agents' work even if the individual believes the agents to be acting outside the scope of their lawful authority. And owners and employees should be careful not to attempt to obscure or destroy evidence during and after the raid.

After the raid: Following an ICE raid or other enforcement action related to the hiring of undocumented

workers, work with counsel to document what federal agents seized from the business, what the agents asked and what your employees told the agents. For example, sometimes ICE is looking for a particular individual and states as much in the search warrant or orally in its questions to your employers. Other times ICE is looking to shut down a business that, in its view, is routinely violating the law by employing undocumented workers. If the agents' focus is on I-9 forms, it is likely that the focus of the investigation is on the business rather than any undocumented individual. Knowing why ICE came to your business's front door will help you plan your next steps.

Conclusion

The current Administration's direction to ICE to focus its enforcement against Democratic-run cities is likely to result in continued enforcement actions against those whom ICE believes employ undocumented workers. In addition to posing a threat to a company's undocumented workers, these efforts could easily lead to subsequent prosecutions of employers for employing and harboring such individuals, and for obstructing ICE's efforts to conduct its enforcement operations. In the face of such threats, employers should educate themselves and their employees on their respective rights and make a plan in the event that ICE shows up at their front door.

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