



ice inspections, site visits and raids

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There have been many announcements regarding worksite inspections and raids being conducted at employment sites around the country by the Department of Homeland Security's Immigration and Customs Enforcement agency.

Employers should recognize that a site visit is not an indication that the company, its managers or any of its employees, did anything wrong. Certainly, the visit of immigration officers, including armed officers, at a workplace can be unnerving.

Below is a recommended course of action:

The first person the visitor will see is a receptionist, so all receptionists should be prepared for the possibility of an unannounced site visit. The reception staff should know who within the organization has been designated as responsible for receiving worksite inspectors, and contact that person immediately. If the responsible person cannot be summoned within a reasonable time, the receptionist should politely ask the officer to leave a card and indicate he or she will receive a call back within a day, or within a few hours. If the responsible person is available, the receptionist should politely ask the officer to wait. If the position(s) the officer is inquiring about is a union job, the union representative should be notified also.

In public areas, such as lobbies and waiting areas, immigration officers would be in a similar position as a member of the public. Without a signed judicial warrant, they would not be able to enter private areas. They may also be asked to leave the premises, if they are interfering with customers or employees. Employees have the right to choose to remain silent, if they wish, and they may ask immigration officers to speak with their employer. Employees may also ask if they are free to leave; if they are not free to leave, they have the right to an attorney.

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practice areas

immigration



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Private areas should be clearly marked with visible signs, and doors should remain closed and locked. To enter private areas, immigration officers must have a signed judicial warrant from a federal court ("US District Court") or state court. An administrative warrant from the US Department of Homeland Security or US Immigration and Customs Enforcement, such as a Form I-200 or Form I-205 is not sufficient, and does not require compliance. Neither is an or an Immigration Court Order of Removal. If a judicial warrant is presented, it should be inspected to verify the timeframe for the search, the area to be searched, and any items to be searched for and seized (payroll documents, employee identification documents, etc.). The search will proceed over any objections, but may be challenged later. A polite but clear (and witnessed) objection should be made, so government officials may not later claim the search was consensual, and therefore any challenges to it, waived. To access employee records, the agents must provide either a judicial warrant, subpoena, or I-9 Notice of Inspection. Upon receipt of any of the above mentioned documents, employer representatives should immediately contact legal counsel.

During a worksite enforcement investigation, employers may take notes/videotape, request reasonable accommodations (e.g. to make copies of vital documents before they are seized), and object to searches outside of the scope of the judicial warrant. There is no need to block or interfere with the investigation, but any objections should be documented.

Employees may refuse to group themselves by immigration status, if instructed by Immigration Officers, which is a common tactic. Employees also have the right to choose to remain silent, and they do not need to answer questions regarding their immigration status or provide identity documents. If they are not free to leave, they have the right to an attorney.

The responsible person of the company should direct officers to a separate, quiet area for them to sit and review any documents. There should not be any materials in the designated area, and the officer should not be in a location where he or she can hear random office chatter. There should not be a telephone in the area. It is imperative that the officer not be in an open area with available materials and conversations easily overheard. The responsible company representative should bring requested immigration visa documents or files to the officer. The officer should not wander around the office. If the officer insists on viewing the workspace of a particular employee or contractor, then he or she may be taken to that space.

The responsible company representative should be knowledgeable about the company's immigration enforcement and compliance practices. It should be someone who has access to the company's immigration counsel, and has a working knowledge of the substance of the company's immigration filings. Moreover, the contact should be knowledgeable and firm, but also polite and friendly. It does not help to antagonize the officer (s), or otherwise create an adversarial atmosphere. If everything is truthful as is stated on the immigration forms, the job and position should be explainable in a clear and concise manner.

Most importantly, no one except for the designated individual or individuals should speak on behalf of the company and its management. The designated individual should also advise the immigration officer that the company has legal representation, and that immigration counsel should be notified if further questions or explanations are needed.



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If the officer asks to speak to a specific foreign national employee, the employee should be sent into the private area to speak with the officer in the presence of the responsible company representative. Should the officer present a subpoena, which is rare, the company's labor and immigration counsel should be notified ASAP.

Finally, the company representative should be certain to obtain the officer's contact information. In case the officer does request additional information, the representative should be sure to obtain a very clear and precise understanding of what the officer is looking for.

Employers should be prepared for these onsite visits and inquiries from various agencies charged with enforcement of US immigration laws. Preparedness and advance planning for these situations is the best policy.