

# Immigration Enforcement Guide: Preparing for ICE & Other Worksite Enforcement Actions

With changes in immigration enforcement and policies, aging services organizations should prepare now to create safe, informed, and responsive environments in the event of Immigration and Customs Enforcement (ICE) or other government enforcement action. While aging services is not traditionally a targeted industry, organizations are encouraged to engage in proactive compliance to prepare for an era of increased immigration enforcement.

## WHAT ARE THE TYPES OF GOVERNMENT AGENCY WORKSITE ACTIONS?

Immigration and Customs Enforcement (ICE) is one of several government agencies that can appear at your organization unannounced. The Fraud Detection and National Security Directorate (FDNS) of the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), the Department of Labor (DOL), and the Department of Justice (DOJ) are government agencies with authority to audit and investigate workplaces.

### If ICE visits your organization, they can carry out three different activities:

1

Auditing of employee I-9 records via a Notice of Inspection;

#### I-9 Audit | Notice of Inspection

An ICE Notice of Inspection (NOI) requires employers to produce requested I-9s and other associated documentation typically within three (3) business days to make sure employees are authorized to work.

An NOI is limited – ICE employees cannot enter private areas without a judicial warrant and should not be permitted to speak to employees if the NOI is the sole purpose for their visit. Consult with your counsel before responding and do not share personal employee information without verifying the legal necessity.

2

Conducting a search with a judicial warrant, commonly known as a “raid”; or

#### Judicial Warrant or ICE “Raid”

With a judicial search warrant, ICE has authority to gain immediate access to the workplace and its records, sometimes referred to as a “raid.” ICE must prove probable cause and receive a signed search warrant by a judge to enter. Carefully review the judicial warrant to ensure signed, unexpired, and specific to your facility/address.

Notify counsel immediately and ask to see a warrant and verify it is signed by a judge. It’s important to identify a company representative to document the details of the event, including the date, time, ICE agent badge numbers, and what was said and done. Don’t obstruct ICE, but do not volunteer employee or other protected information without consulting legal counsel.

3

Arresting a specific individual(s) via an arrest warrant.

#### Arrest Warrant

ICE may come to the workplace if they have an arrest warrant for a specific individual(s). Notify counsel immediately and ask to see a warrant and verify it is signed by a judge. An arrest warrant does not necessarily grant ICE the authority to enter the premises, so read the scope of the arrest warrant to determine whether it permits agents to carry out the arrest onsite or to wait until the end of the employee’s shift, offsite or at a mutually agreed place between ICE agents and legal counsel.

# HOW TO PREPARE FOR ICE & OTHER GOVERNMENT AGENCY VISITS

Preparing now can ensure your team is informed and responsive, but also mitigate the impacts of increased immigration enforcement.

1

## DESIGNATE A RESPONSE REPRESENTATIVE

Determine in advance a company representative(s) who should be first be alerted in the case of any ICE activity—typically a senior HR leader or legal representative or risk management officer. This representative should be informed of how to respond to unannounced visits and different ICE activities. Company representatives should be strategically designated to ensure at least one representative is physically on site at all times of operation. This representative should also oversee communicating with outside legal counsel in advance, but also during ICE visits, including what document(s) were presented (NOI, judicial search warrant, arrest warrant) and collecting copies of the agents' business cards or the agents' badges.

2

## IDENTIFY OUTSIDE COUNSEL

Identifying, in advance, an outside legal counsel advisor is critical in preparing your organization for increased immigration enforcement. Outside counsel can prepare a response to a request and interact with agents to confirm the scope of a request or warrant, respond to an NOI, or move to quash a subpoena (in whole or in part).

3

## DESIGNATE & DISTINGUISH PRIVATE AREAS

Since government agents need a judicial warrant or permission to enter private areas, it is essential to clearly designate private areas. Post signs clearly marking spaces as private (such as patient areas, bathrooms, lounges, file rooms, etc.) and indicating that all visitors (including government agents) must check in at reception. Install barriers between public and private areas and ensure staff maintain the privacy of private areas (keeping them locked and not allowing piggybacking). Ensure private information is out of public view.

4

## PREPARE YOUR TEAM

Inform and train a response team that may have to interact with ICE's unannounced visits. This can include receptionists, site leaders, HR leaders, and other "front-of-house" personnel that may be the first ones to see ICE enter. Ensure they know to contact the company response representative and to not let agents enter the property without proper authority.

5

## MAINTAIN IMMIGRATION SPONSORSHIP DOCUMENTATION

Complete an internal audit of the employment and documentation of any employees with immigration sponsorship to ensure their job duties, worksites, and salary are consistent with the approved immigration petition. Thoroughly prepare and maintain required Public Access Files and other required supporting documents for sponsored employees.

6

## AUDIT YOUR I-9 RECORDS & PROCEDURES

Now is an important time to audit your I-9 records and review your employment verification policies and procedures. Do you regularly train staff who complete I-9 Forms? Do the documents contain errors or missing information? Have you reviewed the copies of documents to assess whether they may be fraudulent/suspect? Do you monitor, notify employees, and timely reverify I-9 Forms prior to expiration? Are all staff that are responsible for I-9s well-trained, confident, and consistent in their review? Do you retain I-9s for separated employees for the mandatory retention period (3 years from hire or 1 year post-separation, whichever is longer)? If you use electronic software to complete and retain I-9 forms, have you reviewed and audited to ensure full compliance?

7

## FOSTER A SUPPORTIVE WORK ENVIRONMENT

Make sure to keep lines of communication open—staff should feel safe coming forward with questions or concerns. Now is a great time to reaffirm your organizations non-discrimination and inclusion policies, as well as promote your employee assistance programs (EAPs) that may help provide free resources, like legal referrals or mental health support.

# UNDERSTANDING GOVERNMENT AGENCIES

An overview of their authority and responsibilities

USCIS

## USCIS - Fraud Detection & National Security Directorate Investigations

- FDNS Officer may appear at worksite to confirm representations in a nonimmigrant petition (H-1B, H-2A, H-2B, L-1)
- FDNS agents may question dates of employment, supervisor, work schedule, salary, job title and duties, etc.
- Employer must cooperate with FDNS and provide requested information related to the nonimmigrant petition
- Penalties include civil penalties, debarment from federal contracts, and criminal investigations by ICE

DOL

## Department of Labor - Wage & Hour Investigations

- Agents can make unannounced visits to worksites to conduct investigations and confirm employer compliance
- Agents may interview non-management or non-supervisory employees without employer's consent
- Penalties include debarment from H-1B program & other immigrant programs for 1 year

DOJ

## Department of Justice Investigations

- DOJ investigations are triggered by charges filed by individuals (candidates, employees, terminated employees) or referred by other agencies (E-Verify, ICE)
- Penalties include civil penalties, back pay awards, hiring orders, and injunctive relief

## WHAT TO DO IF ICE VISITS UNANNOUNCED?



- 1 Contact your organization's response representative.
- 2 Inform agent that you have legal counsel and notify legal counsel.
- 3 Ask to inspect a warrant or authority to enter.
- 4 Take notes: names, badge numbers, dialogue, requests, etc.
- 5 Accompany the agent at all times.



- 1 Do NOT let ICE into private areas without a proper judicial warrant.
- 2 Do NOT hide employees or destroy any documents.
- 3 Do NOT share employee information without legal review.
- 4 Do NOT panic, act confrontational or combative.

## ADDITIONAL RESOURCES

For more information on how to prepare your organization for increased immigration enforcement, below is a collection of free resources available.

RESOURCE TYPE	RESOURCE NAME
ARTICLE	<a href="#">When ICE Comes Knocking, Know Your Rights – And Protect Your Staff and Patients</a> (Fredrikson)
ARTICLE	<a href="#">What is Our Business is Visited by ICE? Preparing for Potential Audits and Raids in an Era of Increased Enforcement</a> (Faegre Drinker)
ARTICLE	<a href="#">Understanding Employer Rights and Obligations If ICE Knocks on Your Door: What You Need to Know</a> (Felhabar Larson)
ARTICLE	<a href="#">Preparing for ICE Visits in Light of Executive Orders</a> (Ballard Spahr)
ARTICLE	<a href="#">ICE Warns I-9 Audits to Exponentially Increase</a> (Fredrikson)
ARTICLE	<a href="#">Immigration Enforcement and Rental Housing</a> (National Apartment Association)
ARTICLE	<a href="#">Rescission of the DHS Protected Areas Policy: Implications for Healthcare Systems</a> (Holland & Knight)
RESOURCE	<a href="#">Immigration Enforcement Preparedness Resources</a> (LeadingAge) (must be a member of LeadingAge National to access)
WEBINAR RECORDING	<a href="#">How to Prepare for Immigration Enforcement at Your Worksite and in Your Community</a> (Fredrikson)
WEBINAR RECORDING	<a href="#">Right of Immigrants &amp; Safety Planning</a> (Mid-Minnesota Legal Aid)
PODCAST	<a href="#">Partner Alissa Smith Featured on Healthcare Policy Podcast on How to Handle ICE Agents in Patient Settings</a> (Dorsey & Whitney)