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US Immigration and Customs Enforcement (ICE) agents recently raided close to 100 7-Eleven stores across 17 states in the US demanding employment verification from managers in an attempt to crackdown on the employment of undocumented immigrants. This was the largest enforcement action taken by ICE since the new presidential administration took office last year. TerraLex has collected insight into what businesses of all types - in jurisdictions around the world - can learn from these recent enforcement sweeps.

- **What are 3-5 critical action steps employers should take in order to ensure compliance with the US Federal Government in the event of a raid by ICE?**
- **What are some important considerations employers and employees should keep top of mind if an onsite raid occurs?**

Please read below for responses to these questions from members in various jurisdictions. For further assistance on this matter, or to get in touch with one of our TerraLex Members, contact TerraLex Chief Business Development and Marketing Officer, [Tim Shannon](#).



Firm: [Wang Jing & Co.](#)

Jurisdiction: China, Guangzhou

In the event of a raid by ICE, we suggest the employers prepare and provide ICE with a) duly executed employment contracts, b) the records of employees' work licenses, c) the records of the foreign employees' passports and visas, and other visa related files for ICE's inspection.

If an onsite raid occurs, it is necessary for the employers and employees to cooperate with the investigation and inspection by ICE, answer the questions truthfully, timely submit the required documentation, and make corrections/ improvement as required by ICE.



Firm: [Burr & Forman](#)

Jurisdiction: US, Alabama

Authors: Anton F. Mertens, Partner

Employers cannot avoid ICE raids but they can be ready for them. Make sure that your workforce is only comprised of people authorized to legally work in the U.S. In addition, verify that your I-9 forms are up to snuff. Perform an internal audit to make certain that you've crossed your t's and dotted your i's. If need be, make corrections and fix the problems before an ICE agent comes knocking. The fines for noncompliance are steep. If you are subject to E-Verify as an employer, you will need to comply with that, as well.

The training of your human resources professionals is crucial to equip them with the tools to deal with raids and audits. This includes having a procedure in place when the ICE agents arrive to disrupt your day. Designate a lead contact and have your immigration attorney on speed dial. It is important to differentiate between an I-9 audit and an all-out raid with the accompanying warrants and Kevlar vests.

The Fraud Detection and National Security (FDNS) division within USCIS also conducts random site visits targeted to identify visa fraud. If you have employees on work visas, you need to designate someone familiar with the information in the petition that was submitted to USCIS to be able to answer questions during the site visit. You should also have your attorney present to address any issues. In this era of enhanced immigration compliance, it is important that you get it right the first time.



Firm: [Sheppard Mullin](#)

Jurisdictions: US, California

Author: Greg Berk, Special Counsel

I-9 Compliance: Employers should make sure that they have an I-9 on file for every employee in the US. The employee must complete and sign the I-9 by the first day of employment. The employer must examine the original unexpired work authorization documents and complete Section 2 of the I-9 by the 4th day of employment. The employer should review the I-9 for completeness. Foreign national employees in the U.S. must have their work authorization timely re-verified prior to expiration. Using a reliable digital software is helpful to complete and store the I-9's rather than relying on the paper method.

ICE I-9 Audit: If ICE issues an I-9 Notice of Inspection to an employer, the employer should request an extension of time to surrender the I-9's. Absent an extension, ICE will require that they be ready three days later. At a later time, ICE will give the employer an opportunity to make technical corrections for minor errors on the I-9's. If ICE determines that some of the employees are not work authorized (and their documents are not genuine), they will issue a Notice of Suspect Documents. The employer must then meet with each employee on the list, and absent an error or misunderstanding, must timely terminate the employee. If a large number of employees will need to be terminated, the employer can

request ICE allow for additional time to find replacement workers - ICE will sometimes grant an extension to do this. Then ICE will issue a Notice of Intent to Fine for those I-9's that have substantive violations. If the employer feels that the fines are excessive, they may appeal to the US. Department of Justice Office of the Chief Administrative Hearing Officer.



Firm: [Buchanan, Ingersoll & Rooney](#)

Jurisdiction: US, Florida (outside of Miami-Dade County) and Pennsylvania

Authors: Yova Borovska, Associate

In this era of enhanced enforcement, employers need to be ever more vigilant to help ensure they are strictly hiring legal workers, that is, those who are authorized to legally work in the US and can prove it, while balancing this with the obligation not to hire in a discriminatory fashion. Some of the more general compliance actions which can be taken include: (1) hiring in a lawful manner, without engaging in unlawful discrimination, (2) using the proper onboarding forms, including the Form I-9 to verify the identity and work authorization of new employees, and completing them correctly; (3) conducting periodic self-audits in order to identify and correct any deficiencies, (4) developing a policy dedicated to immigration compliance; and (5) training personnel to understand and implement the policy in a consistent manner. These actions are only a few that can be implemented to reduce an employer's liability prior to an audit or raid. In the event of a raid or audit, it is imperative for employers and their workers to have a rapid response protocol in place, which may include contacting a team of legal professionals, media representatives, and community advocates.



Firm: [Barnes & Thornburg](#)

Jurisdiction: US, Indiana

Author: Jeff Papa, Shareholder

The most critical aspect of protecting an organization against fines (some companies were recently hit with fines in the millions) and potential criminal penalties in this area is to maintain compliance with I-9 regulations. Employers generally must maintain I-9 forms, verifying identity and employment authorization, for all current employees, as well as former employees (for the longer of one year after employment ends or three years from the date of hire). Companies should ensure that they have a comprehensive system in place to complete an I-9 for all new hires within three days, and to update any forms that were completed with documents that will soon (or have) expired. If a company has not done so, it should consider undertaking a comprehensive review of existing I-9s and internal processes as soon as possible. Correcting existing mistakes and removing currently unauthorized workers from payroll before a government inspection may greatly mitigate the possible serious consequences. Government agents may appear without notice and demand to inspect compliance with a warrant, or may request to see the document without a warrant with just three days' notice. Ensuring that all documents are in order in advance of such inspection is critical. Further complicating this process are various state laws, such as California's recent AB450 that imposes additional restrictions and requirements on employers in handling these issues, and the fact that too much I-9 document verification (such as asking for too many or specific documents) can lead to charges of document abuse.



Firm: [Phelps Dunbar](#)

Jurisdictions: US, Louisiana

Author: Brandon Davis, Partner

Here are the critical actions steps employers should take to ensure compliance and to prepare in the chance that their business is raided by the federal government:

- Consult with counsel who can complete an internal audit of all I-9 Forms. Determine whether any employees are currently working with employment authorization and, if so, take prompt remedial action. Correct errors that are identified and train employees and managers to comply with currently applicable employment eligibility verification regulations. Finally, identify dates when any employee's employment eligibility will expire and make an action plan to timely renew visas for those employees.
- Review the company's current employment eligibility verification policies and determine whether those policies address today's pro-worksite enforcement climate. Revise and update those policy statements as appropriate. Ensure employees and managers are trained on the new policy statements and that they acknowledge receipt of the policies and training.
- Identify an in-house worksite enforcement response team that can respond when the government initiates a worksite enforcement raid and/or issues subpoenas for employment records. That response team should include a lead person who can work as liaison between the employer and the government. Critically, any in-house response team should work in tandem with outside counsel, particularly in cases where the US Department of Justice initiates and completes worksite enforcement actions.

Employers must understand the difference between administrative worksite enforcement actions (which are normally resolved through fines/penalties) and criminal worksite enforcement actions (which can expose an employer to criminal penalties and imprisonment). Although administrative audits and investigations from agencies like USCIS and/or ICE are important and could eventually develop into criminal investigations, the most serious cases involve actions where the US Department of Justice initiates worksite enforcement actions against employers who may be prosecuted for white collar crimes. It is important that employers, their managers, and employees know their rights in these types of cases so they may properly respond if a criminal worksite enforcement action occurs. Employers dealing with criminal worksite enforcement actions should keep the following considerations in mind:

- You have the right to remain silent.
- You have the right to ask whether you are free to leave.
- You have the right to speak to a lawyer.
- You have the right to remain on property you own, unless you are arrested and detained.
- You have the right to review and legally challenge any search warrant presented concerning the worksite enforcement action.



Firm: [Miles & Stockbridge](#)

Jurisdiction: US, Maryland

Authors: Sufen Zhang, Associate

In light of the government's announced intent to increase its immigration-related enforcement efforts against employers, it has never been more important for employers to ensure that they are in compliance with existing immigration laws and regulations. In preparation for potential enforcement action by ICE, employers should:

- Review existing policies and procedures for hiring foreign workers, completing Form I-9, complying with E-Verify requirements, managing international travel, preparing and submitting visa applications, and similar immigration-related issues, to ensure that those policies and procedures are in full compliance with applicable law and regulations.

- Conduct an internal immigration compliance audit (or hire an external resource to do so) and adopt an immigration compliance policy. Ideally, the audit and policy should not just cover I-9 compliance; it should include all aspects of the employer's immigration-related obligations including H-1B compliance, compliance with laws regarding the filing of visa petitions and employment of foreign workers (including wage and hour obligations), compliance with laws pertaining to international travel, and other similar issues.
- Consider participation in E-Verify. In appropriate cases, E-verify participation can be a key component of an employer's compliance effort.
- Train staff with I-9 responsibility and assign immigration responsibility to trained and competent staff. Too often, mistakes are made due to a simple lack of training or experience with the I-9 process.

ICE generally appears unannounced and in some cases, with a substantial show of force. To avoid unnecessary disruption and panic, employers should consider these steps to prepare:

- Determine in advance which employee will be responsible to interact with ICE agents and provide training to that employee. In particular, that employee should understand the different types of government inspections, visits, audits, and raids that may occur, the legal importance of warrants and subpoenas, the risks to the company of non-compliance, and other similar issues. If possible, two or more employees should be trained to ensure that someone is always available.
- Develop a written plan of action covering questions such as what information should and should not be provided to ICE officers, what access should ICE officers be provided to the facility and staff members, how to contact internal and external counsel immediately, how to interact with ICE officers during the encounter, and other similar topics.



Firm: [Baker Donelson](#)

Jurisdiction: US, Mississippi and Tennessee

Author: Robert C. Divine, Shareholder

Employers seeking to get ahead of the increased enforcement orientation of the US Government as to immigration should review practices and policies about employment verification and sponsorship, train workers and managers for compliance, internally audit employer verification and sponsorship files and systems, and alert reception workers and managers to handle a government site visit or warranted search.



Firm: [McLane Middleton](#)

Jurisdiction: US, New Hampshire

Authors: Shiva Karimi, Of Counsel

The best way for US employers to prepare for an Immigration and Customs Enforcement (ICE) raid is to preemptively conduct an internal audit and address potential violations. Employers should start with an I-9 audit which will help identify, to the extent possible, whether employees are authorized to work in the United States. Employers should assess existing I-9s, create compliance policies and procedures, and ensure that HR staff members are trained accordingly. Since the purpose of an ICE raid is to ensure that all workers are authorized to work in the US, employers should prepare for the

possibility of ICE raids by ensuring US employment authorization of all of their employees, as well as proper documentation through I-9 compliance.

Immigration and Customs Enforcement (ICE) raids are stressful and emotional events. It is difficult for employers and employees to stay calm and thoughtful, although that is the best course of action. Employers should carefully review warrants to understand the allowable scope of the search, and ensure proper timing. Attorneys should be contacted immediately, and if possible, be present. Without being confrontational or getting in the way, a member of the HR team should document what takes place, which employees if any are detained, and which documents are collected.



Firm: [McNair Law Firm](#)

Jurisdiction: US, South Carolina

Authors: Melissa Azallion, Shareholder

- Be prepared before ICE comes knocking at your company's door. Conduct a thorough internal I-9 and E-Verify audit to review your compliance and make corrections where necessary.
- Training, training, and more training. Make sure the company officials responsible for I-9 and E-Verify completion are well-trained and up-to-date on the latest developments in the areas of immigration compliance and non-discrimination. Be sure your managers know how to handle "constructive knowledge" situations that come up during the hiring and/or employment process.
- Have a clear internal protocol for personnel should ICE make an unannounced visit to your place of business. Who will be the company spokesperson? Do you have experienced immigration counsel to provide representation?



Firm: [Benesch](#)

Jurisdiction: US, Ohio

Authors: H. Alan Rothenbuecher, Partner

Top Ten List of I-9 Nuances and Best Practices

1. The employee is not obligated to provide a social security number in Section 1 unless the employer participates in E Verify.
2. For contracts with subcontractors, have subcontractors represent:
 - Each of its employees completes I-9.
 - Each of its employees is authorized to work in US and meets employment eligibility requirements.
 - Conducts periodic internal audits of I-9s.
3. The contract with a subcontractor should also include an indemnification provision and right to audit provision.
4. The I-9s should be completed by the employee on first day of work. To the extent the employer chooses to have I-9s completed before the date of hire, they should only be requested after a position

has been offered and accepted and there should be a uniform policy applicable to all employees receiving an offer of employment having to complete the I-9 ahead of time.

5. File I-9s separate from personnel records and categorize into three groups: Terminated employees, current employees, and employees that need re-verification. I-9 forms for terminated employees should be filed in order of eligible purge date for administrative convenience.

6. Retain I-9s for three years from the date of the employee's hire or one year from the date employment ends, whichever is later.

7. Persons transferring within a company are not required to complete an I-9 form, but the easiest practice is to complete a new I-9 anyway rather than having to document the I-9 was done previously.

8. Employees rehired by a company need not complete a new I 9 as long as they resume work within three years of completing the initial form I-9. Also, it is not necessary to complete a new I 9 after:

- An employee completes paid or unpaid leave (such as for illness or a vacation).
- A temporary layoff.
- A strike or labor dispute.
- Gaps between seasonal employees.

9. Employees who receive a signing bonus but who have not actually begun employment would not be required to complete a Form I-9 until actual work for the employer commenced.

10. A returning employee does not need to complete a new I-9 in certain instances where he or she is considered to be continuing prior employment. These include:

- When an individual is returning from an approved paid or unpaid leave of absence (such as on account of illness, pregnancy, maternity, vacation, study, family leave, union activities, or other temporary leave of absence approved by the employer).
- When the individual is promoted or demoted or receives a significant raise.
- When the individual is temporarily laid off for lack of work.
- When the individual is out on strike or in a labor dispute.
- When the individual is reinstated after a finding of wrongful termination.
- When an individual transfers within the same employer (the I-9 may be transferred to the new unit).
- When there is a merger, acquisition or reorganization and the new employer assumes the Form I-9 responsibilities from the prior employer.
- When the employee is engaged in seasonal employment.



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