

Info sheet >>>

IMMIGRATION LAW BASICS FOR SMALL BUSINESSES

What you need to know if you have employees...

IMMIGRATION ENFORCEMENT

Federal immigration enforcement actions at places of business have more than doubled in the last year. Do you know what to do if immigration officers come to your business? This info sheet will review how employers can prepare for an inspection and what rights and responsibilities business owners have when it comes to immigration enforcement.

WHY MIGHT IMMIGRATION OFFICERS COME TO YOUR BUSINESS?

There are two reasons that immigration officers may visit a place of business. First, they may conduct an **inspection** of a business' I-9 employment authorization records. Second, they may conduct an **enforcement** action to find and detain people, documents, or property within a business. Business owners should be prepared for both types of visits.

INSPECTION

Employers must complete an **I-9 Form** for each new employee to verify that they are eligible to work in the United States, and retain those forms even after an employee leaves the job. Employers do not submit these forms to the federal government, but federal agencies may inspect a business' I-9 Forms to ensure compliance.

ENFORCEMENT

An enforcement action, commonly referred to as a **raid**, is when immigration officers come to a worksite without warning to detain people, documents, or property within a business. A raid may follow an I-9 audit, or result from an independent investigation into a person, business, or industry.

WHY IT MATTERS:

There are serious consequences to inspection and enforcement actions—both to the business owner and to the employees. For example:

- Employers may be fined and in some instances criminally prosecuted; fines range from \$110 for document errors to \$16,000 for knowing and repeated violations;
- Workers—including authorized workers—may be detained and deported; and
- Businesses may be barred from federal contracts.

WHAT YOU CAN DO

You and your employees are protected by state and federal laws, even during a federal immigration inspection or enforcement action. You have the right to:

- Receive three days' notice before an I-9 audit;
- Ask for a warrant before an immigration officer can enter private spaces, question workers, or access documents;
- Stay silent, and speak to a lawyer about your rights and responsibilities.

For maps of ICE enforcement actions >>>

Nationally:

<https://www.aila.org/infonet/map-ice-enforcement-actions-january-2017-current>

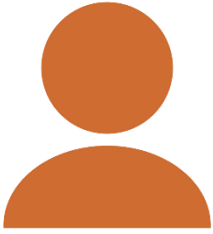
New York:

<https://www.immigrantdefenseproject.org/icewatch/>

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UNDERSTANDING WORKSITE INSPECTION AND ENFORCEMENT

Before diving into action steps, it's important to understand what ICE is. This section will give you a better understanding of what ICE worksite inspections and enforcement entails.

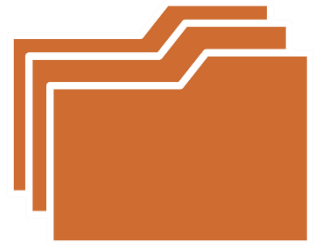


WHO ARE THEY?

- Field agents from the U.S. Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) conduct enforcement actions.
- ICE agents are not police officers, but they may identify themselves as police, wear uniforms that say "Police," and may be accompanied by local police officers.
- Some local police have been deputized as ICE officers under a federal contract. In NY, this is currently only true of Rensselaer County Sheriff's Officers.

WHAT ARE THEY LOOKING FOR?

- ICE agents may come to your business looking for documents, property, or people.
 - *Documents.* In an I-9 audit, a business is entitled to 3-days' notice to produce the documents for inspection. In an I-9 raid, where ICE agents want to inspect or confiscate documents without notice, they should produce a judicial warrant.
 - *Property.* In order to inspect or confiscate property, such as computers or servers, ICE should produce a judicial warrant specifying the property subject to inspection or confiscation.
 - *People.* If ICE wants to arrest someone at your business, they must produce a judicial warrant for their arrest, stating the name of the person subject to arrest.
- *Note:* ICE agents are limited to the scope of the warrant. But if people run, ICE may have a legal reason to arrest them.



WHERE CAN THEY SHOW UP?

- Anyone, including federal agents, can enter public areas of your business without permission.
Public areas include: parking lots, lobbies, restaurant dining areas, sales floors, and retail shops that are open to the public.
- ICE agents may not enter private areas of your business without either your permission or a judicial warrant.
Private areas include: back offices, kitchens, factory floors, fields, worker housing, and any other area that is not open to the public.



REMEMBER: An I-9 audit require 3-day's notice. A worksite enforcement action, or "raid," requires a judicial warrant.

WHAT YOU CAN DO TO PREPARE

In the following pages, we will outline the actions that business owners can take to protect their interests and their workers before, during & after a raid.

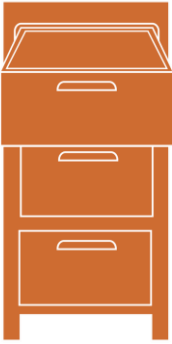
Continue to the next page to start with what to do BEFORE A RAID →

BEFORE A RAID >>>

CLEARLY MARK PRIVATE SPACES

A business owner has the right to determine which areas of the business are open to the public and which are private. Unless you give permission, ICE agents may not enter private spaces without a judicial warrant.

- Private areas may include: back offices, kitchens, factory floors, fields, worker housing, and any other area that is not open to the public.
- Clearly mark private areas that are not open to the public. Post signs that say "Private," "Employees Only," or "Do Not Enter." (image of a PRIVATE sign)
- **Train your workers and managers:** Do not consent to ICE agents entering private areas. Once you or your employee has consented, you have waived your right to privacy in those places.



KEEP YOUR I-9 FILES SEPARATE FROM OTHER FILES

Officials from the **Department of Homeland Security**, employees from the Immigrant and Employee Rights Section (IER) at the **Department of Justice**, and employees from the **Department of Labor** may inspect an employer's I-9 forms. This is called an "I-9 audit."

- Keep your I-9 files separate from your other files. If you are subject to an audit, you may easily access the files for review. Do not turn over additional files that are not subject to review.
- Delivering a Notice of Inspection (NOI) does not give ICE the right to review your files, enter private spaces, or interview your employees.

REMEMBER: You are entitled to 3-days' notice for an I-9 audit. ICE may come to your business and deliver a "**Notice of Inspection (NOI)**," and ask to see your I-9 files at that time. **Do not waive your 3-days' notice; ask them to return in 3 days.**

ESTABLISH A PROTOCOL

Do your workers know what to do if ICE comes to your business? ICE's first point of contact may not be with a manager. Employees who want to be helpful may inadvertently consent to a search. Train all your workers on what to do if ICE comes to your business.

ASSIGN A POINT PERSON WHO WILL:

- Speak with ICE agents and determine the purpose of their visit
- Ask to see a warrant (see below)
- Decline to consent to a search
- Contact the business owner, attorney, or other authority
- Document ICE actions

Train all your workers to refer ICE agents to the point person and decline to consent to a search. Employees can say, "I don't have authority to let you enter. Please wait here while I get a manager." All workers have the right to remain silent, ask for an attorney, and decline to sign anything.

An important note >>>

The rights, responsibilities, and interests of your **employees** are different from yours. Your attorney should not also represent your workers.

Connect your workers with attorneys or advocates who can train them on what to do when interacting with immigration officials. Contact the **New Americans Hotline: 1-800-566-7636**

DURING A RAID >>>

Always ask for a warrant. Remember, ICE may not access private spaces without either your consent or a judicial warrant. Below is an overview of some of the differences between what a judicial warrant and administrative warrant might look like.

JUDICIAL WARRANT

You must comply with a judicial warrant, which is signed by a judge, and will say U.S. District Court or a State Court at the top.

Issued by a Court

A.O. 93 (Rev. 12/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location):

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge _____ (name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30), ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____ Judge's signature _____
City and state: _____ Printed name and title _____

Signed by Judge

ADMINISTRATIVE WARRANT

You do not need to comply with an administrative warrant, which is merely a request from the agency. Do not consent to a search. Decline to answer any questions about the subject of the warrant.

Issued by ICE

U.S. Department of Justice
Immigration and Customs Enforcement

Warrant of Removal/Deportation

File No: _____
Date: _____

You may see a Warrant of Removal/Deportation or Arrest

To any officer of the United States Immigration and Customs Enforcement:

(Full name of alien)

Who entered the United States at _____ on _____
(Place of entry) (Date of entry)

Is subject to removal/deportation from the United States, based upon a final order by:

☐ An immigration judge in exclusion, deportation, or removal proceedings
☐ A district director or district director's designated official
☐ The Board of Immigration Appeals
☐ A United States District or Magistrate Court Judge

And pursuant to the following provisions of the Immigration and Nationality Act: Section 241 (a) (5) of the Immigration and Nationality Act (Ace), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction command you to take into custody and remove from the United States the above-named alien, pursuant to law at the expense of the appropriation. "Salaries and Expenses Immigration and Customs Enforcement" including the expense of an attendant if necessary.

(Signature of ICE Official)

(Title of ICE Official)

(Date and Office Location)

Signed by ICE

**Continue to the next page
to view what to do
IF ICE PRESENTS A JUDICIAL
WARRANT**

IF ICE PRESENTS AN ADMINISTRATIVE WARRANT

Do not consent to a search. Decline to answer any questions about the subject of the warrant. You can say:

- ✓ **This is an administrative warrant.** I will only comply with a judicial warrant.
- ✓ **I do not give you permission to enter.** I do not consent to a search.
- ✓ **I do not wish to answer any questions.** I wish to speak with a lawyer.

If ICE agents enter anyway, do not obstruct them. State clearly that you do not consent. Document their actions.

IF ICE PRESENTS A JUDICIAL WARRANT

Read it and understand the scope of the warrant. It may identify a person to arrest, list certain locations to search, or identify documents or property to seize.

- ✓ **Check for an expiration date.** A warrant may include a date-range for the raid to take place. If the date has passed, decline to consent.
- ✓ **Check for accuracy.** A search warrant should correctly list the address of your business and the areas to be searched.
- ✓ **Check that ICE follows the warrant.** An arrest warrant generally does not give ICE permission to search the private areas of your business, even if the subject of the warrant may be there. A search warrant does give ICE permission to enter the private areas of your business, as described in the warrant. If ICE goes outside of the scope of the warrant, say out loud that you do not consent to the search (but do not obstruct the officers).
- ✓ **Document the actions of the ICE agents.** Do not obstruct ICE agents and do not assist them in executing the warrant. For example, do not sort your workers by status or country of origin.

An important note >>>

ICE does not need a warrant to enter the private spaces of your business when there are “exigent circumstances.” ICE may enter private spaces without a warrant to respond to an emergency, apprehend a fleeing suspect, or stop the destruction of evidence. This means that if ICE sees people running, they may have reason to chase.

AFTER A RAID >>>

If any of your employees has been taken into ICE custody, ask ICE agents where they will be detained.

- Notify the employee’s emergency contact or other appropriate person.
- Consider how you may help your affected workers:
 - Connect them to legal services. Contact the **New Americans Hotline: 1-800-566-7636**
 - If a detained employee is offered bond, consider paying it. Detention separates a person from their support system and makes it much harder to prepare a case.
- You must pay your employees for work they have performed, even if they are detained. Speak with your employee to determine how they will be paid.
- Report the action. Contact:
 - Immigrant Defense Project, 212-725-6422



REVIEW TIPS

You and your employees are protected by state and federal laws, even during a federal immigration inspection or enforcement action.

REMEMBER:

Anyone, including federal agents, can enter public areas of your business without permission. ICE agents may not enter private areas of your business without either your permission or a judicial warrant.

- ✓ Clearly mark private areas
- ✓ Train your workers not to give consent to enter private areas
- ✓ Ask to see a warrant

You must comply with a judicial warrant, which is signed by a judge, and will say U.S. District Court or a State Court at the top. You do not need to comply with an administrative warrant, which is merely a request from the agency.

- ✓ If your business is served with a judicial warrant, you must comply.
- ✓ Stay calm; do not obstruct or assist ICE agents.
- ✓ Document ICE actions
- ✓ Assist any affected workers

A Notice of Inspection (NOI) for an I-9 audit is not a warrant. You are entitled to 3-days notice before you must turn over your I-9s.

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