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Dealing with Immigration Enforcement Agencies: Suggestions and Courses of Action for Ag Employers

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IMMIGRATION

Recent Border Patrol activity in the Central Valley of California has caused concern among agricultural employers and employees. The agency carrying out these enforcement actions publicly stated its aim was to apprehend and detain criminal aliens against whom the agency has pending detention orders. These have caused significant disruptions for agricultural employers and for their employees and their families. FELS has received scattered reports of agricultural employees staying home declining to go work, send their children to school, or otherwise emerge from their homes.

You and your employees have constitutional rights that you can insist enforcement agencies respect. Employers can help each employee be aware of their right to remain silent, the right to refuse to answer any questions about their immigration status without an attorney present, and the right to speak with an attorney.

The “Alphabet Soup” of Agencies Immigration Enforcement Agencies; What’s the Difference?

Several agencies reside under the bureaucratic umbrella of the federal Department of Homeland Security. These agencies have authority to conduct workplace visits and inspections:

Border Patrol is an agency of U.S. Customs and Border Protection and conducts actions to remove deportable people, among other activities.

Homeland Security Investigations is the main investigative arm of the U.S. Department of Homeland Security. HSI collects and inspects employers’ I-9 Employment Eligibility Verification forms and other paperwork for compliance.

Immigration & Customs Enforcement enforces immigration law and can initiate deportation proceedings. ICE agents aren’t local police, but they often carry weapons and wear jackets or vests with POLICE printed on them.

U.S. Citizenship & Immigration Services audits employment-related immigration sponsorship, as when agricultural employers use the H-2A temporary non-immigrant employee visa program.

DO NOT CONSENT TO ACCESS WITHOUT BEING PROVIDED THE AUTHORIZING PAPERWORK

These enforcement agencies must follow specified procedures and have the proper paperwork and authority to enter the premises and conduct a search or an audit.

- **Notice of Inspection** – This is an ICE/HSI request to furnish Forms I-9 within three business days. Contact an attorney before responding.
- **Immigration Enforcement Subpoena** – This usually includes a request for other documents along with the Forms I-9.

- **Judicial Warrant** – This warrant is signed by the judge of a court. It may allow ICE agents to enter private areas or seize documents onsite. Read the warrant. ICE actions are limited to the scope of the warrant. You need not give consent beyond the specified scope of the warrant.
- **Administrative Warrant** – This usually has “Department of Homeland Security” printed at the top of its first page and is on Form I-200 or I-205, issued as part of an I-9 audit. If ICE shows you an administrative warrant with an employee’s name on it:
 - You need not confirm the employee is or is not working on that day.
 - You need not take the ICE agents to the employee named on the warrant.
 - California Employers: Without an appropriate warrant or subpoena, California employers must not give permission or voluntarily consent to access. The employer should say, “I cannot consent, and I do not consent.” Be vigilant, and short of attempting to physically restrain or block them, strive to ensure the agents do not exceed the warrant’s authorizations.
- **Inventory Receipt** –If records are seized, ICE must give the employer a receipt to inventory what they are taking.

HAVE A PLAN

Designate a manager or executive to be responsible for interacting with enforcement agents. The designated person will do two important things:

- Determine if the agents have the right kind of warrant.
- Deny them entry if they don’t.

This person must be trained **NOT** to consent to a workplace search unless provided with a valid judicial search warrant.

A valid judicial search warrant will include:

- A header identifying the court and jurisdiction issuing it.
- An affidavit, which is a sworn statement from a law enforcement officer providing the basis for the warrant.
- The location to be searched, including address, type of building, and any distinctive features.
- Items to be seized including any drugs, weapons, or documents.
- A statement of probable cause explaining why the officer believes evidence of illegality will be found at the location specified in the warrant.
- Dates of issuance and expiration.

Ideally, the designated manager or executive will be the one responsible for:

- Immediately alerting legal counsel.
- Inspecting the documentation to ensure the warrant or Notice of Inspection is valid.
- Recording the names and badge numbers of the agents or officers. (If you have operations outside California, police and sheriffs in those states can accompany and act alongside ICE agents. You have the right to demand names and badge names of all officers.)
- Accompany the agents at all times; at no time should agents be allowed to wander or speak to employees without your presence.
- Ensure agents do not go beyond the scope of their authority as specified in any search warrant.

INFORM YOUR WORKFORCE ABOUT THEIR RIGHTS

Key points for employees to remember during an immigration enforcement action:

- **Stay calm and do not run:** Fleeing can be seen as suspicious and could worsen your situation.
- **Exercise your right to remain silent:** You need not answer questions about your immigration status or personal details.
- **Ask for a lawyer:** Insist on speaking to an immigration attorney before answering any questions or signing

documents.

- **Do not provide false information:** Lying to authorities can have serious consequences.
- **Document details:** If possible, note the names of officers, their badge numbers, and the time of the raid.
- **Know your rights:** Even those who might be unlawfully present in the United States benefit from basic rights during an immigration enforcement action.

PROTECTING EMPLOYEES DURING AN ENFORCEMENT ACTION

- **Remind employees to stay calm and NOT run away;** ICE agents can engage in “hot pursuit” and arrest people suspected of violating immigration laws.
- **You may video or record the ICE agents** so long as you do not interfere with their permitted activities.
- **With a judicial warrant, ICE agents may confiscate** devices such as phones and laptops; ask them to “image” the technology without taking devices.
- **Do not give voluntary consent** for ICE agents to stop, question, or arrest anyone, or to go everywhere they desire; limit your consent to their access to areas specified in their warrant.
- **Do NOT help ICE agents sort people** by their immigration status or the nation they are from.
- **The best way for employees to protect their rights is to stay silent and to ask for an attorney;** everyone has these rights. Employees do not have to hand over any identification documents or papers to ICE agents.
- Any information employees give to ICE agents can later be used against them.
- **Anyone arrested should ask for an attorney** and a “show cause hearing.”

AFTER THE ENFORCEMENT ACTION

Document:

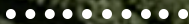
- How many ICE agents were present (inside or outside)? What were their names?
- How were the agents dressed? How were they armed?
- Did the agents make you or your employees believe you or they could not move or leave?
- Did the agents threaten or mistreat anyone? If yes, how?
- If ICE agents arrest anyone, ask them where they are being taken.
- If there is an I-9 inspection, prepare the documents. You can request more than three days to produce the documents.
- California employers must post a Notice to Employees of I-9 and other inspections of immigration records; Labor Code section 90.2.

Immigration-related enforcement activities can lead to a need for legal counsel. *FELS Newsletter* subscribers can avail themselves of the FELS Group Legal Services Program for a free hour of legal assistance with our partner law firm Barsamian & Moody. Please contact FELS' Sacramento office for an assessment and referral.



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