

What to do if ICE Visits Your Business

BY ANTHONY EWING | NOVEMBER 07, 2018

“Zero tolerance” immigration enforcement means EVERY New Jersey business faces the risk Of a visit by immigration agents for a Form 1-9 audit, a raid or to detain specific people.

A Form I-9 audit, (done through the service of a “Notice of Inspection”) is when ICE comes to your business to check if you followed the rules for Form 1-9. Form 1-9 confirms a worker’s identity and authorization to work in the United States. Employers must retain these forms for all current and former employees for at least three years.

ICE agents may go to a worksite without warning as part of an investigation into an employer.

ICE agents are not police officers, but their uniforms may say “Police” or “Federal Agent.” They may carry guns. Sometimes local police officers go with ICE agents on ICE raids.

ICE agents may come to your business to try to find a particular person (or people). While they are there, they may try to question, detain and even arrest other people.

Always be prepared:

Train all workers to not allow ICE agents to enter private areas of your workplace. A worker can say, “I can't give you permission to enter. You must speak with my employer”

Train all workers to not interact with ICE agents. If ICE agents have questions or requests, workers should say nothing or simply, " You are not allowed to enter Talk to my employer”

Train your staff: Do not run away if ICE agents show up. Running away could give ICE a legal reason to arrest workers.

When ICE arrives:

For public areas (like a restaurant dining room)

Anyone—including ICE agents—can enter public areas of your business without permission. Public areas include a dining area in a restaurant, parking lot, lobby or waiting area.

Being in a public area does not give ICE the authority to stop, question or arrest just anyone.

No one can enter a private area of your business, such as the kitchen of a restaurant, without your permission or a judicial warrant.

TIP: To show that some areas are private, mark them with a "Private" sign, keep the doors closed or locked and have a policy that visitors and the public cannot enter those areas without permission.

For private areas (like a restaurant kitchen)

Immigration agents can enter a private area only if they have a judicial warrant.

A judicial warrant must be signed by a judge, and it must have “US District Court” or “[insert state name] Court” at the top.

Without a judicial warrant, ICE agents need your permission to enter private areas of your business.

If ICE agents try to enter a private area, you should say, “This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?”

If ICE agents tell you that they have a judicial warrant, ask for a copy and read it.

TIP: Sometimes, ICE agents try to use an administrative warrant to enter. But an administrative warrant does not allow agents to enter private areas without your permission. Administrative warrants are not from a court. They say “Department of Homeland Security” and are on Forms I-200 or I-205.

If ICE agents try to stop, question, detain or arrest a worker:

The best way for workers to protect their rights is to stay silent and ask for an attorney

Workers do not have to hand over any IDs or papers to ICE. All workers have this right.

Any information that workers give to ICE can be used against them later

If ICE arrests one of your workers, ask the ICE agents where they are being taken. This information will help the worker's family and lawyer find the person.

If you are subject to an I-9 audit:

When ICE notifies you that there will be a Form 1-9 audit, contact an immigration lawyer. You have the right to speak to your lawyer before answering questions or signing ICE documents.

The law gives you three work days to produce your 1-9 Forms. Do not provide your documents early

After reviewing the 1-9 forms, ICE may find that some employees are not authorized to work or some former employees were not authorized to work, and they will note every procedural mistake made in completing each Form 1-9. ICE will also review your payroll records for the last three years to verify that a Form 1-9 was properly completed for each employee. Remember: Before documents are handed over to ICE, there are procedures that may be taken to mitigate—if not eliminate—civil or criminal penalties.

Ask ICE for more time. This will give affected workers more time to talk to an immigration lawyer.

Important: These recommendations are for informational purposes only. This is not legal advice. Consult an immigration lawyer for advice in any specific case.

Source: National Employment Law Project and National Immigration Law Center,

“What to Do if Immigration Comes to Your Workplace” (July 2017). **[nilc.org/employer-guide workplace-imm-enforcement](http://nilc.org/employer-guide-workplace-imm-enforcement)**

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