

What the Rise in Worksite Raids and I-9 Audits Means for the Construction Industry

By

September 21, 2018

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Immigration and Customs Enforcement (ICE) audits and worksite raids are surging across the country, and the construction industry is often the target.

The Trump Administration has made it a key priority of its immigration policy to ramp up I-9 audits and worksite raids, which should put the labor-scarce construction industry on alert. According to the ICE Enforcement and Removal Operations Report for Fiscal Year 2017, the more than 143,000 administrative arrests conducted is the highest number of the past three years.

The Administration has performed hundreds of inspections on businesses. The visits can result in an immediate loss of workforce, abandoned-project claims on performance bonds, loss of business income, and other direct and indirect costs to employers.

It is important for employers in the construction industry to ensure their company is prepared for a visit from ICE. Tips on what to do in case of an ICE raid include:

1. Ask for the ICE officers to identify themselves. Ask for their names and business cards.
2. If ICE has obtained a judicial search warrant, examine the judicial search warrant to ensure that it is properly signed.
3. Immediately transmit the search warrant to your legal counsel.
4. If ICE does not have a search warrant, they cannot enter the premises without consent of an authorized representative.
5. Ask if counsel can come to the employer's premises while the raid is occurring. However, ICE will not delay a raid while waiting for your attorney to arrive.
6. Assign staff to accompany ICE officers as they go around the facility.
7. Advise the assigned staff to take notes of all actions of the ICE officers. Staff should make a note of any items seized and ask if copies can be made before they are taken.
8. Advise assigned staff not to block or interfere with the ICE officers as they go about their activities. They should remain calm and composed and not engage in any hostilities toward the agents.
9. Your staff and employees are not required to give any statements to ICE officers or allow themselves to be interrogated.
10. You should inform employees that they have a right to talk with ICE officers or not talk to them if they like. However, do not direct employees not to speak to agents when questioned.
11. Do not engage in any activities that could support a potential harboring or obstruction charge. This includes hiding employees, aiding in their escape from the premises, providing false or misleading information, denying the presence of specific named employees, or shredding documents.
12. If agents want access to locked facilities, unlock them – otherwise, agents will forcibly gain entry into locked closets or cabinets.
13. After the raid, contact the families of any detained employee(s).

14. Do a full debriefing of staff to determine the following:

- Whether any employees were arrested – during a raid, at home, and so on.
- What other contact the arrested employees may have had with ICE.
- What questions were asked or assertions made by ICE.
- What answers were given.
- Which employees or supervisors were discussed.
- What the detained employee's history was with the company: who hired him, who completed the I-9, who referred him to the company for hire, what documents were used to complete the I-9, and what discussions took place at the time of hire.
- Whether the names of any former employees were included in discussions with ICE.

This article is meant to provide employers with basic considerations in advance of a possible ICE raid. As an ICE raid implicates potential civil and criminal charges, it is essential to consult with counsel on these matters.

Please contact a Jackson Lewis attorney with any questions.

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