



KEEPING THE COWS IN WISCONSIN™

How to Handle Immigration Investigations

U.S. Immigration and Customs Enforcement (ICE) investigations often involve a visit at which the ICE officer delivers a letter asking to review I-9 forms and payroll information within three days. ICE may also arrive at the employer's facilities with a subpoena or warrant giving the ICE officers access to the facilities. Employers are allowed to insist that ICE present a subpoena or warrant prior to entry. However, employers should consult with counsel before insisting upon or questioning the validity of a subpoena or warrant.

In the event ICE presents a letter requesting I-9 forms, employers should take the following steps:

- The owner and/or a manager/supervisor designated as the person(s) to which ICE officials are directed (the Designated Representative) should be contacted immediately.
- All employees should be trained to direct inquiries to the Designated Representative.
- The Designated Representative should verify the identity of the agent and the agency involved and confirm the scope of the agency's request.
- The Designated Representative should contact the employer's attorneys.
- I-9 forms should be provided within three days as required by law. If copies of the I-9 documents presented by employees to evidence their identity and U.S. work authorization are normally made, these copies must be kept with the I-9 forms and turned over to ICE with the I-9 forms. A policy of keeping I-9 forms separate from personnel and other records is advised. This will ensure that the company can quickly compile and present I-9 forms without turning over or sorting through other personnel records.
- The presentation of the letter by ICE does not allow ICE to enter the premises or search any part of the premises.

If ICE does arrive with a warrant or subpoena:

- The Designated Representative should examine and verify the identification of the investigating agent(s) and the contents of the warrant or subpoena.
- The Designated Representative should immediately notify the employer's attorneys and members of management of ICE's arrival.
- Agents may only search places and seize items or documentation covered by the warrant or subpoena.
- The Designated Representative should accompany investigators while they are on the premises.
- Employers should document (preferably copy) any documents seized by ICE during their investigation.
- Members of the press or other nongovernmental parties should not be given access to the worksite or any information about the investigations.
- Employees are not required to answer agents' questions and should not volunteer information to agents. Employees should be courteous in dealing with ICE.
- Employees should not physically impede the search and should not conceal, alter or destroy items subject to the search.

To minimize risks and liabilities associated with immigration raids and investigations, employers should take steps to ensure compliance with immigration laws. A showing of good faith can help employers avoid fines and penalties. Various components of an I-9 protocol can be used to establish good faith, including:

- Internal annual audit of Form I-9 records is advised.
- Create and maintain up-to-date and uniform policy on employment verification procedures and social security number mismatch notice response.
- Train human resources and hiring personnel on employment authorization, immigration, and discrimination rules.
- Maintain "reminder" system to alert employees of upcoming work authorization expiration dates (for Form I-9 re-verification purposes).