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Navigating ICE Raids and I-9 Audits: What Employers Should Know

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With President Trump's recent inauguration, issues surrounding immigration law have made their way into workplaces across the country. As raids conducted by U.S. Immigration and Customs Enforcement (ICE) are underway, it is crucial for employers to understand their rights and responsibilities if and when ICE agents arrive.

ICE agents may come to a workplace for a raid, form I-9 audit, or to detain specific people. However, everyone in the United States, regardless of their legal status, has certain protections under the Constitution, specifically under the 4th, 5th and 6th Amendments.

ICE is allowed to be in public spaces where persons do not necessarily have any expectation of privacy or protection. Courts have considered various factors, including the source of funding, the nature of the services provided, and the statutory definitions applicable to the entities in question when determining whether a business may be deemed a "public space."

The two main instances where ICE might show up at an employer's place of business: an ICE raid and a form I-9 audit.

ICE Raid

An ICE raid is when ICE agents go to a worksite without warning as part of an investigation into an employer. ICE agents may come to the place of business to try to find a particular person. While they are there, they may try to question, detain, and even arrest other people. ICE agents are allowed to enter the business' public areas—like a lobby, for example—without any sort of official permission. However, for access to the business' private areas, ICE needs to have either the employer's permission, or a judicial warrant. Employers should note the difference between a judicial warrant and an administrative warrant, which ICE agents may present instead. There are certain limitations to what information the agents are entitled to with only an administrative warrant.

Note that a judicial warrant is one signed by a **judge.** ICE agents may very well have an administrative warrant from the Department of Homeland Security, but that is not a judicial warrant. When ICE agents show an administrative warrant with an employee's name on it, employers do not have to say whether the employee is working that day, and do not have to take the agents to that employee.

ICE Form I-9 Audit

ICE agents may come to the employer's business to perform a form I-9 audit. This will not occur without notice—ICE will provide the employer with a notice of inspection and employers must comply within **three days**. An I-9 Audit is when ICE comes to the place of business to check if the employers followed/are following the rules for form I-9. Form I-9 confirms a workers' identity and authorization to work in the U.S., and

is required for all new employees. If it is found that any employee is not authorized to work, ICE will give the employer 10 days to rectify the issue or risk certain penalties.

It is critical for employers to ensure they are prepared to provide all necessary documentation in the case of an audit. It is also recommended that employers have a policy in place and communicate with their employees regarding the proper procedure in the case of an ICE Raid or I-9 Audit.

If you have any questions about ICE-related matters or need training and policy drafting, please contact your Knox Law attorney, our Labor & Employment group, or call us at 814-459-2800.

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