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# GUIDANCE FOR BUSINESSES WHEN FEDERAL IMMIGRATION OFFICERS ARRIVE

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The arrival of federal immigration officers at a workplace, construction site, or business can be a stressful and uncertain experience for both employers, employees, and other individuals on the premises. Amid a recent surge of federal immigration enforcement activity in Minnesota — including a large deployment of Immigration Customs Enforcement ("ICE") and other federal agents to the Twin Cities that has drawn significant public attention and legal challenges — it has become vitally important for businesses to prepare a response protocol should agents arrive at a business, workplace, or construction site. This article outlines some practical steps contractors and businesses in general can take before and after federal immigration officers arrive, focusing on preparation, awareness of rights and responsibilities, and strategies for maintaining professionalism and compliance, protecting workers and visitors, and for mitigating the risk of a legal dispute with the federal government.

Please note that the below is intended to provide only general, practical guidance on workplace response and compliance; it does not address individual immigration status, removal proceedings, or criminal matters, which require case-specific legal advice.

## 1. Proactive Risk Mitigation

Preparation is the best defense. Having a response plan in place will aid your organization in responding when ICE or any other government agents show up at your business.

- **Designate a Point of Contact (POC):** Identify a specific individual (and a backup) trained to greet and interact with government agents. This person should be calm, professional, and aware of the organization's legal rights.
    - Ensure all staff, particularly those who will most likely be the first to interact with ICE or other government agents, know who the POC is and how to contact them. Also identify one or more backup POCs in the event the primary POC is unavailable.
    - In turn, the POC should know exactly who to call internally (e.g., Legal, HR, or Senior Management) for support and guidance while any government agent is on the premises. Those individuals should make arrangements to be available in the event of a call, and identify backup contacts should they be unavailable. The procedures should be in writing to enable the POC to quickly and correctly implement the organization's plan.

- **Plan for Logistics:** Think through the layout of your specific workplace or business, identifying areas that are public, areas that are not public, and ensuring that visitors in public areas cannot gain access to private areas. Identify a specific public or controllable private space (e.g., vestibule, lobby, conference room, etc.) where, absent a judicial warrant, agents or officers will be asked to remain while the business responds to any demands. All staff should be trained to inform the government agent(s) that they are to remain in that location until the POC arrives. Employees should be trained not to allow entry to private areas to any unidentified individuals without specific authorization of the POC.

  Controlling access to construction sites, generally, and controlling where agents can go once on a construction site is logistically more difficult than an office building. One option to limit or control access to a construction site is to post signs consistent with Minn. Stat. § 609.605: a sign that is at least 8½ x 11 inches posted in a conspicuous place at intervals of 500 feet or less that warns against trespass in letters at least 2" high and states that Minnesota law prohibits trespassing on the property.

  If agents enter a posted construction site, consider whether to ask them to leave, or alternatively, bring them to a designated location on the site with instructions that the agents cannot leave the designated location.

- **Flexible Work Arrangements:** In the construction industry, remote work is not realistic for the workers on a construction site. However, consider offering temporary remote work options for roles where physical presence is not strictly required, and an employee feels unsafe.

- **Employee Documentation:** Encourage employees who feel unsafe to carry legal documentation with them, including a driver's license or passport. They should, however, be very careful to ensure those documents are not lost or misplaced, and may consider keeping a digital copy of that documentation as well.

- **Internal Audit:** It is a good idea to internally audit the organization's Form I-9s and personnel files. Ensuring these are organized and compliant now reduces the risk that ICE will demand entry into your workplace and could prevent avoidable penalties later.

## 2. Protocol While ICE is Present

If agents arrive at your organization or on a construction site, below are some practical steps for the organization:

- **Verify Authority:** Request the agent's credentials and any warrant they may have.
  - Write down the information or make a copy so you have it in case you need it later.
  - If the agents do not have a warrant, they likely do not have any authority to enter non-public areas of your business. However, ICE agents may have authority to ask

questions regarding immigration status while in a public area. Whether and how to respond to such questions, particularly at an organizational level, are fact dependent and guidance from an attorney may be beneficial.

- **Review the Warrant:** Not all warrants are created equal.
    - **Judicial Search Warrant:** Signed by a judge; grants access to specific areas.
    - **Administrative Warrant:** Signed by an official from the government agency serving the warrant; generally does **not** grant the right to enter non-public areas without employer consent.
    - In both circumstances, the warrants must be filled out, signed, and dated. Otherwise, they are likely not valid.
    - Assess whether the warrant requires immediate action while the government agent is on the premises, or if it provides a later deadline for responding. If it provides a deadline for responding, it is appropriate to inform the government agent that you will be consulting counsel before determining how you will respond, and inviting the government agent to leave the premises in the meantime.
- **Limit the Scope:** The POC should respectfully and politely insist that agents stick to the specific subject matter or locations outlined in the warrant.
    - If the government agent's requests exceed the scope of the warrant (e.g., if the agent seeks to speak with a person or see an area of the premises not specified in the warrant), the POC should explain that they are not looking to interfere with any law enforcement operation, and will allow access once a warrant is provided that covers the subject matter to which the agents are requesting access.
    - Remember that once a government agent enters your business, particularly areas that are not open to the public, they will likely contend that the search is permissible because it was consented to by the company, even if they gain access via pressure or coercion. It is advisable to inform the agents: "I do not consent to a search of these premises without a lawful, signed warrant. I am happy to cooperate once a judicial search warrant is provided, but until then, I must ask you to remain in the public lobby [or outside]."
    - Do not sign any documents presented by agents without legal review. Sometimes agents will provide Consent to Search forms that may document the company's consent to a broad search and waive any future objection to it.
    - As noted above, parking lots and lobbies are often considered public spaces, whereas other portions of the building (e.g., break rooms, private offices, etc.) are

private spaces. Agents need a warrant to access private spaces, but not public spaces.

- If you are given a Notice of Inspection ("NOI") for I-9s, review it carefully before responding. Pay particular attention to deadlines for responding. Often, employers are not required to immediately produce I-9 forms after receiving a NOI. If time allows, have an attorney review the NOI.

- The POC is legally permitted to video record the encounter with agents so long as the POC does not physically interfere.

- Do not proactively hide employees, aid them in leaving by abnormal means, or provide false information to the agents. Such conduct may form the basis for a charge against the organization for harboring or obstruction of justice.

- **Control the Environment:** Rather than allowing agents to roam the office or construction site, ask them to wait out front, in a lobby, or in a controlled area while you bring the specific files or individuals identified in the warrant to them. Remember that if you implicitly and unintentionally allow an agent to wander into a private space, they may contend that any personnel or evidence observed is a lawful search.

- **Document the Encounter:** After the encounter has ended and agents have left the premises, the POC and any other relevant personnel should document in writing what happened, whether any documents or individuals were seized, and any other pertinent information about the situation.

### 3. Employee Messaging

Communication is key to maintaining morale and safety. Below are some important points to convey to the organization's employees.

- **Transparency:** Acknowledge the current environment and reaffirm the organization's commitment to a safe and respectful workplace.

- **Informative:** It is okay to remind employees of their rights (such as the right to remain silent or the right to speak with an attorney).

  - It is also okay to remind employees of resources such as EAP and HR for counseling services or with non-legal requests.

- **Supportive:** Provide clear instructions on who employees should notify if they observe agents on-site.

As immigration enforcement activity continues to affect workplaces across the state, preparation and clear procedures can help reduce confusion and ensure that interactions remain orderly and

lawful. Understanding who may speak with officers, what documentation may be required, and how to respond calmly can support both businesses and employees during these encounters.

Bassford Remele's Labor & Employment and Construction and Real Estate Teams are ready to provide clear, strategic guidance on this and a wide range of construction, labor, and employment issues, helping contractors understand and navigate the legal implications of these events.

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