

Transition – A Presidential Change Update

February 2025

HSI WORKSITE ENFORCEMENT ACTIONS: EMPLOYER RIGHTS AND RESPONSIBILITIES

Criminal investigations, business audits and arrests by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) special agents and auditors surged in fiscal year 2018 compared to the previous year, following a commitment made by the agency in late 2017 to step up its worksite enforcement efforts across the country. Thomas Homan was part of ICE leadership during that time and has been named the “border czar” of President Trump’s second term. The Biden administration dramatically scaled back worksite enforcement actions, but those actions are expected to significantly increase during Trump’s second term, particularly in industries that are known or suspected to have a high percentage of undocumented workers.

Preparation is crucial when it comes to an immigration worksite enforcement action. Even if you carefully verify the work authorization of all your employees, Homeland Security Investigations (HSI), a federal law enforcement agency within the Department of Homeland Security (DHS), may still investigate your workplace based on a lead, complaint, or other factors.

If agents visit your workplace, be aware of the following:

Contact Your Attorney

When agents arrive at your worksite, immediately contact Thompson Hine. Your employees who would first interact with guests at the workplace should inform the officers, “Our company policy is to call our lawyer, and I am doing that now.”

Scope of Operations

Immigration officers are permitted to enter any public areas of your workplace (e.g., a lobby), but they must have a valid search warrant or your consent to enter non-public areas. If the workplace is a publicly accessible location such as a restaurant, officers can be in the same areas in which guests could be present.

- A valid *search* warrant must be signed and dated by a judge. An ICE deportation warrant is not the same as a search warrant

and an ICE deportation warrant does not authorize agents to search your organization. A search warrant will include a timeframe within which the search must be conducted, a description of the premises to be searched, and a list of items to be searched for and seized (e.g., payroll records, employee identification documents, Forms I-9, SSA correspondence, etc.).

- An agent will serve the search warrant on a receptionist or company representative and alert other agents to enter.
- Your company can accept the warrant but not consent to the search. If you do not consent to the search, the search will proceed, but you can later challenge it if there are grounds to do so.
- Depending on the type of business, agents may demand that equipment be shut down

and that no one leave the premises without permission.

- Agents may move employees into a contained area for questioning.
- While some agents question employees, others will likely execute the search and seizure of items listed in the warrant.

Employer Rights and Responsibilities

Employers have certain rights and responsibilities during a worksite enforcement action:

- If a search warrant is presented, examine it to ensure that it is signed by the court, that it is being served within the permitted timeframe, and that the search is within the scope of the warrant – the area to be searched and the items to be seized. Be sure to send a copy of the warrant to your attorney.
- Write down the name of the supervising agent and the name of the U.S. attorney assigned to the case.
- Have at least one company representative follow each agent around the facility. The employee may take notes or videotape the officer. Note any items seized and ask if copies can be made before they are taken. If the agent does not allow you to make copies, you can obtain copies later.
- If agents presented a valid search warrant and want access to locked facilities, unlock them.
- Request reasonable accommodations as necessary. If agents insist on seizing a document that is vital to your operation, explain why it is vital and ask for permission to photocopy it before the original is seized. Reasonable requests are usually granted.
- Do not block or interfere with federal agent activities. Note that you are not required to give the agents access to non-public areas if they did not present a valid search warrant.
- Object to a search outside the scope of the warrant. Do not engage in a debate or argument with the agent about the scope of the warrant. Simply state your objection to the agent and make note of it.
- Protect privileged materials.
 - If agents wish to examine documents designated as attorney-client privileged material (such as letters or memoranda to or from counsel), inform them that they are privileged and request that attorney-client documents not be inspected by the agents until you are able to speak to your attorney.
 - If agents insist on seizing such documents, you cannot prevent them from doing so. If such documents are seized, try to record in your notes exactly which documents were taken by the agents and which agent(s) seized them.
- Ask for a copy of the list of items seized during the search. The agents are required to provide an inventory to you.
- Company representatives should not give any statements to federal agents or allow themselves to be interrogated before consulting with an attorney.
- You may inform employees that they may choose whether or not to talk with federal agents, but do not direct them to refuse to speak to agents when questioned.
- Do not hide employees or assist them in leaving the premises without permission. Do not provide false or misleading information, falsely deny the presence of named employees, or shred or otherwise obscure documents.

Do not forget the health and welfare of your employees. Enforcement actions can sometimes last for hours. If an employee requires medication or medical attention, or if employees have children who need to be picked up from school, communicate these concerns to the federal agents.

Employees' Rights

Employees have the right to remain silent and the right to an attorney. Ask if your employees are free to leave. If they are not free to leave, they have a right to an attorney. While you should not instruct your employees to refuse to speak to federal agents, they also have the right to remain silent and do not need to answer any questions.

- Your employees do not need to answer questions about their immigration status, where they were born, or how they entered the United States. They may exercise their right to remain silent and may ask to speak to an attorney.
- If federal agents try to determine your employees' immigration status by asking them to stand in groups according to status, they do not have to move, or they can move to an area that is not designated for a particular group.
- Employees may also refuse to show identity documents that disclose their country of nationality or citizenship.
- If your employees are detained or taken into custody, ensure that you assign someone to contact their family, and pay them any money owed for services.

Post-Enforcement Action Issues

The investigation does not end after the federal agents leave the premises. HSI and the U.S. attorney will thoroughly review the items seized during the enforcement action, and the investigation, including undercover surveillance, can continue for many months.

HSI is not the only law enforcement agency that can visit or conduct an enforcement action against your worksite. The Department of Labor may also investigate, and in some jurisdictions,

state and local police can act on behalf of HSI in an operation.

Planning Ahead

If you do not have a worksite enforcement action plan in place, we will work with you to develop one that best ensures you are adequately prepared in the event of an unannounced visit from federal law enforcement. Thompson Hine has partners in both its Immigration and White Collar Defense & Investigations practices who are ready to assist you. We can review and update your company's I-9 policy and compliance and help ensure proper training, prepare for audits, and help assess contractor compliance for businesses that use temporary or contract workers from third-party vendors.

FOR MORE INFORMATION



Sarah C. Flannery

Partner, Immigration
216.566.5718

Sarah.Flannery@ThompsonHine.com



Kelli L. Hayes

Partner, Immigration
614.469.3344

Kelli.Hayes@ThompsonHine.com



Mark J. Cipolletti

Partner, White Collar Defense & Investigations
202.973.2786

Mark.Cipolletti@ThompsonHine.com



Brittain Shaw

Partner, White Collar Defense & Investigations
202.263.4154

Brittain.Shaw@ThompsonHine.com

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