



WORKSITE RAIDS (EMPLOYER RIGHTS AND RESPONSIBILITIES)



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

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When it comes to an immigration worksite raid, preparation is critical. Even if you are meticulous in confirming the work authorization of all your employees, Immigration and Customs Enforcement (ICE) could investigate your workplace in connection with a lead, complaint, or other factors. If you do not have a worksite enforcement action plan in place, consult with your Meltzer Hellrung attorney.

IN THE MEANTIME, IF ICE COMES TO YOUR WORKPLACE, BE AWARE OF THE FOLLOWING

- **Call Your Attorney.** When ICE arrives at your worksite, call your attorney immediately. The receptionist or company representative should tell the officers, “Our company policy is to call our attorney and I’m doing that now.” Your attorney may be able to speak to the ICE officers over the phone.
- **Scope of Operation.** Immigration officers are free to enter any public areas of your workplace, but must have a valid search warrant or your consent to enter non-public areas.
 - ⇒ A valid warrant must be signed and dated by a judge. It will include a time frame 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, I-9 forms, 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, ICE may demand that equipment be shut down and that no one leave the premises without permission.
 - ⇒ ICE 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 an ICE worksite raid:
 - ⇒ 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 time frame, 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 ICE 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 ICE does not agree, 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 something 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 ICE activities or the agents. However, you do not have 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 present 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), tell them 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.
 - ⇒ Ask for a copy of the list of items seized during the search. The agents are required to provide this inventory to you.
 - ⇒ Company representatives should not give any statements to ICE 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 ICE, but do not direct them to refuse to speak to agents when questioned.

- ⇒ Do not hide employees or assist them in leaving the premises. Do not provide false or misleading information, falsely deny the presence of named employees, or shred documents.
- ⇒ Don't 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 ICE officers.

○ **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. Though you should not instruct your employees to refuse to speak to ICE, 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 ICE tries 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.
- ⇒ They may also refuse to show identity documents that disclose their country of nationality or citizenship.
- ⇒ If your employees are detained or taken into custody, be sure that their families are contacted and any money owed to the employees is paid.

○ **Post-Raid Issues.** The investigation does not end after ICE leaves the premises. ICE and the U.S. Attorney will thoroughly review the items seized during the raid and the investigation, including undercover surveillance, can continue for many months.

ICE is not the only law enforcement agency that can visit or conduct an enforcement action against your worksite. The USCIS' Fraud Detection and National Security (FDNS) Directorate or the Department of Labor may also conduct an investigation, and in some jurisdictions, state and local police can act on behalf of ICE in an operation. For more information about your rights and responsibilities as an employer in the event of an ICE raid or other enforcement action or investigation at your workplace, speak to your Meltzer Hellrung attorney.

The contents of this document do not constitute legal advice.



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Meltzer Hellrung challenges conventions to deliver better outcomes.

Founded with the belief that immigration can be a strategic advantage, we understand the complexities of immigration and respond with innovative solutions to meet business and talent needs. Our unique solution - skilled immigration professionals delivering responsive service to clients through Voyager, our proprietary immigration management platform, delivers the best immigration experience to companies, employees and their families.

