

Worksite Immigration Enforcement Preparedness/ Know Your Rights

Humanage **HR**™



Maria Cordova

Maria Cordova, founder of Humanage HR has over 10 years of proven success in building high-performance organizations through better use of human capital. With a Master's degree in Business Administration from Pepperdine University, Senior Professional in Human Resources (SPHR) and SHRM-SPC Certifications, Maria is experienced in positioning companies for growth through systematic improvement.

WEBSITE www.humangehr.com

952 School Street, Ste. 158, Napa CA 94559 PH 707-509-0194

Email: maria@humangehr.com

Disclaimer

- ❖ Nothing in this presentation should be relied on as legal advice.
- ❖ Consult a qualified attorney about any matter of legal significance.



Agenda

Immigration Enforcement

- What you need to know after AB450
- Responding to worksite raids
- Notice of Inspection requirements
- Verifying employment eligibility (Form I9)

Worksite Immigration Enforcement and Protections



What Employers Need to Know

With the recent news regarding ICE raids on 7-11's across the country, rumors of raids targeted at Northern California businesses and California's Attorney General announcing plans to prosecute employers for violation of new laws passed through AB 450, employers should have a plan in place in the event of a raid.

As of January 1, 2018 AB 450 created new laws governing employers' obligations related to immigration enforcement efforts.

Immigration Enforcement (AB 450)

- Prohibits providing federal immigration enforcement agents access to nonpublic areas of a business without a judicial warrant.
- Prohibits providing federal agents access to employee records without a subpoena or judicial warrant, or with valid “Notice of Inspection”.
- Fines from \$2,000 - \$5,000 for first violation and \$5,000 - \$10,000 for each subsequent violation.

Responding to Worksite Raids- Overview

- ❖ Do not allow agents to enter any non-public area, or provide access to records, without a valid warrant, or for records a valid “Notice of Inspection.”
- ❖ **Public areas:** generally parking lots, lobbies, waiting areas, or other places the public enters or is permitted to enter.
- ❖ **Non-public areas:** offices, back of house areas, areas marked “private” or “no trespassing,” and areas where the public is not permitted to enter due to company policy.
- ❖ Consider signage making clear private areas.

Responding to Worksite Raids

1. **Remain calm.** Avoid making hasty decisions or hostile statements that could exacerbate the situation.
2. **Contact your employment or immigration attorney as soon as possible or practicable.** They can arrive to assist you, however, ICE officers will not delay a raid once it is in motion.
3. **Direct the ICE officer(s) to a designated company manager or representative.** Instruct receptionists, host persons, and other staff not to speak with the ICE officers.
4. **Escort the ICE officer(s) to a separate waiting area** away from active areas within the worksite. Officers are NOT allowed by law to inspect non-public areas without a properly issued *judicial* warrant.
5. **Identify the officer(s).** The designated company officer or manager should ask for the officer(s) name, title, badge number, and agency. If possible, try to obtain the business cards of all officers present.

Responding to Worksite Raids

6. **Ascertain the purpose of the visit.** Several officers may arrive at once seeking to arrest all workers who do not have valid work authorization. Alternatively, one or two officers may arrive seeking to arrest one individual. If officers are arresting one individual, they must have a properly issued *judicial* warrant naming that individual.
7. **Ask the officer(s) to see and inspect a judicial warrant.** To either enter private areas within the worksite OR arrest employees, officers must have a valid warrant from a judge authorizing their entry or ability to conduct arrests. The warrant must include the name of the judge, the exact address of your worksite, the date of the raid, the scope of the raid, the names of any targeted individuals, and an official court stamp. ICE officers have been known to present *administrative* warrants issued by a government agency other than a court (e.g. Dept. of Homeland Security). These are NOT valid for purposes of a worksite raid and you can refuse entry on these grounds.
8. **State clearly that you do not consent to the search and that it is against your wishes.** This will not prevent officers with a valid judicial warrant from entering private areas or making arrests, but it will support any claims you make against ICE after the raid. If you provide consent, officers may enter private workspaces even without a judicial warrant. **Providing consent during an ICE raid is now prohibited under California law.** Severe civil penalties apply (AB450).

Responding to Worksite Raids

- 9. Ensure employee and guest safety throughout the officers' search.** If the officers present a valid judicial warrant, you must comply with its terms. This means allowing officers to inspect the premises identified in the warrant or arrest those persons named. Work to keep employees calm during this time and protect confidential company and employee information such as company financial and employee medical documents.
- 10. Pay close attention to the officers' actions.** Assign other managers and higher-level employees to follow and observe each agent. Take pictures or video if possible. Make note of all actions and statements made by the officers. If officers demand to remove documents from the premises, request to make a copy of those documents.
- 11. Do not sign anything offered to you** without first presenting the document to your attorney.
- 12. Properly document the raid after the officers depart.** Immediately write down details of the raid, including the officers involved, their actions, any arrests, any statements made by you, the officers, or employees, and any documents officers retained.
- 13. Accommodate employees as needed.** Workplace raids can be traumatic experiences for everyone involved.

Important Reminders

- **Do NOT resist** if an officer forces entry. Doing so could subject you to criminal charges or increased hostility. **Instead, document all actions** taken by all officers. Record officer actions with a phone or camera if permitted.
- **State and repeat** throughout the raid **that you do NOT consent to the search** and it is against your wishes.
- **Discourage hostility.** Encourage cooperation amongst officers and employees.
- **Remind all employees that they have a right to remain silent** and are not required to speak to officers unless they are named in the warrant.
- Likewise, **you and the entire workforce have the right to speak to a lawyer at any time** during an investigation and exercise the right to remain silent until given an opportunity to speak with counsel.
- **Do not hide employees.** Doing so can subject you to charges of harboring a fugitive or obstruction of justice.
- **You can refuse entry to any bystanders or members of the press** who are not explicitly named in the warrant.

Form I-9 Inspections (AB 450)

- **Employers may provide I-9's or other forms if a Notice of Inspection has been provided to the employer, without requiring a subpoena or warrant.**
- Must post a notice within 72 hours of receiving a Form I-9 Notice of Inspection (NOI).
- Notice must be in language normally used to communicate employment-related information and contain the following:
 - Date NOI was received.
 - Name of agency conducting inspection.
 - Nature of inspection, if known.
 - Copy of NOI, upon reasonable request.
- Notice must also be given to the collective bargaining representative, if any.

Form I-9 Post-Inspection Requirements (AB 450)

- Within 72 hours of receiving inspection results, give each affected employee and the employee's collective bargaining representative:
 - Copy of the inspection results.
 - Written notice of the employer's and employee's obligations arising from the inspection.
- Notice must contain specific information (personalized), and be hand delivered or mailed and emailed.
- An “affected employee” is one identified by the inspection results as potentially lacking work authorization or having document deficiencies.
- An employer that fails to follow these notice requirements can be fined between \$2,000 to \$5,000 for a first violation and \$5,000 to \$10,000 for each subsequent violation.

Verifying Employment Eligibility- Form I-9

- Ensure you are using current *Form I-9* for new hires.
 - Revision date (bottom left-hand corner of form) 7/17/17.
 - Required after September 18, 2017.
 - Review instructions/supplement. See *Handbook for Employers M-274* for more instructions.
- Ensure you have completed I-9s on file for all employees.
- Employer is not permitted to re-verify the employment eligibility of a current employee at a time or manner not required by Section 1324a(b) of Title 8 of the US Code.
- Employers can only re-verify employment for current employees at the time the work authorization expires. (see USCIC website for more information)

Questions?

Humanage **HR**™