Navigating Federal Immigration Enforcement Activity in the Workplace

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Earlier this year, President Trump issued Executive Order 14159, *Protecting the American People Against Invasion*, with the stated purpose and policy to ensure "that the Federal Government protects the American people by faithfully executing the immigration laws of the United States" and "faithfully execute[s] the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people."

The new Executive Order revokes prior administrations' orders related to immigration enforcement, establishes both civil and criminal priorities related to enforcement actions, and directs the Attorney General and the Secretary of Homeland Security to take all appropriate action to jointly establish Homeland Security Task Forces (HSTFs) in all states and promptly revoke all memoranda, guidance, or other policies based on previous Executive Orders revoked under this new order.

This resulted in the rescission of existing policies protecting sensitive locations from immigration enforcement. These sensitive areas included schools, healthcare facilities, places of worship, social services establishments, disaster/emergency response sites, and other locations and events.

The sweeping executive order and resulting changes in enforcement tactics have led to anxiety among immigrant communities and questions among organizations and employers regarding how to navigate potential immigration enforcement actions.

Impact on the Workplace

Immigration enforcement actions have historically come in a number of ways, from a routine compliance audit (Form I-9 audit) to a more targeted enforcement action based on an investigation into a specific employer or employee.

The most significant impact pertains to those businesses or organizations that previously enjoyed protection as sensitive areas. For others, the changes have little impact beyond the potential for more robust enforcement of immigration laws as directed by the Executive Order.

Preparing for Enforcement Actions

Whether your organization was previously protected from enforcement actions and you are attempting to navigate this new paradigm or simply seeking to prepare for increased enforcement of immigration laws on the premises, several actions can be taken to prepare for a visit from federal agents while protecting your organization and employees.

- Create a response plan to guide your organization in the event federal agents arrive at your facility.
- Train all employees to ensure compliance with plans and policies.

- Know your rights as an employer and the rights of your employees.
- Differentiate between public and private areas of your facilities. While authorities can access those areas open to the public, private areas may be restricted absent a warrant or judicial order.
- Consult legal counsel when creating plans and policies to ensure compliance with legal standards and regulations, specifically issues pertaining to Executive Orders.

If Agents Arrive: Do's and Don'ts

The organizational response plan should include specific procedures to be followed if federal immigration agents arrive at your facility. These procedures should include the following:

Do:

- Restrict immediate access to private areas absent exigent circumstances.
- Require employees to notify designated supervisory and/or management personnel immediately.
- Prohibit employees from discussing or providing information related to the organization or employees without prior authorization.
- Verify the identity of individuals claiming to be federal agents.
- Obtain copies of any documents, warrants, or judicial orders.
- Differentiate between judicial orders or warrants and administrative or civil detention orders.
- Notify and consult with legal counsel for guidance and verification of documents before taking action or providing access to facilities, employees, or records.
- Document enforcement activities.

Don't:

- Do not hide employees or assist them in leaving.
- Do not provide false or misleading information.
- Do not answer substantive questions without consulting legal counsel.
- Do not interfere with the execution of verified warrants or judicial orders.
- Do not interfere with the seizure of documents, equipment, or employees.

Know your Rights and Responsibilities as an Employer

While employers must comply with judicial orders, warrants, and, in many cases, administrative orders executed in public areas, they still retain certain rights and responsibilities during enforcement actions. These include but are not limited to:

- Examine warrants and judicial orders to ensure that they are properly signed and executed within the appropriate time frames and within the scope of the order. Whenever possible, this should be done in consultation with legal counsel.
- Verify and document the identity of federal agents and employees executing the process.

- Assign organizational representatives to document enforcement activities.
- Contact your legal counsel.
- Object to searches and seizures outside the scope of judicial orders or warrants. While objections may be made, representatives should not interfere with the action; simply make the objection known and document it accordingly.
- Request a copy of items seized during searches.

Employers must carefully navigate any federal immigration action to ensure cooperation with authorities while protecting the rights of the organization and employees to the degree possible. Advanced planning and communication with legal counsel before, during, and after any immigration enforcement action is key to successfully navigating this process and minimizing the impact on the workplace.