

Client Alert | February 9, 2026

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## Compliance with Onsite Workplace ICE Inspections: What Employers Need to Know

As evident in the news, the federal government continues to conduct large-scale immigration enforcement actions in the United States. These enforcement actions, which are primarily being conducted by U.S. Immigration and Customs Enforcement (ICE),<sup>1</sup> have led to an increase in unannounced law enforcement visits and/or searches of businesses and workplaces, and even, the arrests of individuals on business property. In light of the current enforcement regime, interactions with ICE at the workplace are no longer a remote possibility, but a reality that all employers should prepare for in advance. Employers who do not have a proactive response plan in place may be exposing themselves to operational, legal and reputational risk.

Below is a high-level explanation of when employers are likely to encounter ICE at their workplace and some key guiding principles that employers should keep in mind when preparing for these government encounters:

### I. What Types of ICE Encounters Can Businesses Expect?

There are generally two types of situations in which ICE agents would enter a business: workplace visits/raids and I-9 audits.

- *Workplace Visits/Raids*
  - ICE may conduct a workplace visit/raid as part of its broader efforts to enforce immigration laws or to arrest specific individuals.
- *I-9 Audits*
  - Employers are obligated to verify the work authorization of all employees and to maintain completed I-9 forms. ICE enforces I-9 compliance by conducting I-9 audits. I-9 audits are triggered by a Notice of Inspection (NOI) requesting an employer's I-9 forms. ICE may arrive unannounced to a workplace to serve the NOI. The NOI may also be accompanied by an administrative subpoena.
  - The company and employees are not required to provide the requested I-9 documentation at the time of the visit. By law, employers have a minimum of three business days to provide the documentation.

### II. What Areas in a Business/Workplace Is ICE Permitted to Enter?

- Public Access — ICE agents may enter any space that is open to the public, including businesses, with or without a warrant. They can enter any space within the business that is open to any regular customer or member of the public.
- Private Areas — ICE cannot enter private spaces of a business such as offices, breakrooms, storage rooms, or back-of-house kitchens without a warrant or the employer's consent. **As discussed further below, federal agents must have a judicial search warrant to enter a private area<sup>2</sup> and search/seize items.** Employers may designate areas as private by locking doors or posting signage indicating that the area is private or limited to employees only.

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1. ICE falls under the ambit of the U.S. Department of Homeland Security and is tasked with immigration enforcement. ICE may carry out its mission with federal law enforcement officers from other agencies.

2. Legal precedent has long held that ICE cannot enter private areas without a judicial warrant, but an internal ICE Memorandum, dated May 12, 2025, claimed that ICE agents may enter a private residence to arrest subjects of an administrative warrant, without a judicial warrant. Although the memo is

### III. What is the Difference Between a Judicial and Administrative Warrant?

- Judicial search warrant — A judicial warrant must be signed by a judge and say “U.S. District Court” or a State Court at the top. If ICE produces a search warrant signed by a state, federal or magistrate judge, then ICE is legally permitted to conduct a search of the areas specified in the warrant. The judicial warrant will state the areas that the agents will be permitted to search. It must state the correct address and ICE must present it within the time period specified on the warrant. Warrants can be broad (i.e. “entire premise”) or they can be very limited/specific (for example, “breakrooms” or “kitchens”). Agents are authorized to only search those areas that are specifically provided for in the warrant. If there are private areas of the business that are not covered in the judicial warrant, then the warrant does not give ICE access to those areas.
- Administrative warrant — An administrative warrant is generally a document that directs ICE to arrest or detain a particular individual. It may resemble the appearance of a judicial warrant, but unlike a judicial warrant it is not signed by a judge; instead, it is signed by an immigration official and typically says “U.S. Department of Homeland Security” at the top. An administrative warrant does not give ICE any additional authority to access or search private areas of a business.

### IV. Can ICE agents arrest employees or individuals on premises without a warrant?

Yes, in certain circumstances. ICE agents may make warrantless arrests if the agent has “reason to believe” the person committed an immigration violation and is likely to flee. There is also a risk of arrest if federal officers have probable cause to believe that the individual committed, or is committing, a crime (for example, obstruction of justice or assaulting a federal officer).

### V. Are employees required to provide information to ICE?

No. Employees may voluntarily choose to provide information to ICE or answer questions. However, they have the right to remain silent, the right to refuse a search of their personal belongings, the right to walk away (if they are not being detained or arrested), and the right to decline to produce personal documentation, including identification. They also have the right to ask for a lawyer prior to answering any questions from the government.

### VI. Can employers be liable for helping individuals escape, flee, or hide from ICE?

Employers should be aware that federal law (and state law in certain jurisdictions) criminalizes the deliberate obstruction of justice of pending proceedings before a U.S. agency, which could include U.S. immigration proceedings. In addition, federal criminal law prohibits individuals from knowingly harboring or concealing anyone who is the subject of an arrest warrant to prevent his/her discovery or arrest. Federal law also prohibits individuals from knowingly concealing, harboring, shielding illegal aliens from discovery (or attempting to do so). If you have questions or concerns about how to navigate employer/employee rights, please contact us.

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not consistent with established legal precedent and did not include legal analysis to support its position, ICE agents may take the position in the future that, like homes, their internal policy authorizes them to enter other private areas to arrest subjects of an administrative warrant without a judicial warrant.

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## Key Contacts

If you have questions regarding best practices or need assistance in developing an ICE response plan or responding to an I-9 audit, please contact us. Morrison Cohen's [White Collar & Regulatory Enforcement Practice](#) and [Government Strategies & Controversies Group](#) are available to assist clients in navigating the DOJ's immigration enforcement agenda. If you require any additional information, please feel free to contact any of the attorneys listed below.

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