

ICE Checklist



To be used by managerial staff; not for use by non-supervisory employees.

Before

- Select and train core team to manage I-9 process
- Perform internal I-9 audit
- As part of the audit, fix what is repairable – initial and date changes
 - If using an electronic system, ensure changes are captured on an audit trail
 - Keep paper I-9 files separate from personnel files
- Set up file system for terminated employees' I-9s
- Create Crisis Management Team
 - Who will contact legal?
 - Who is the main point of contact for coordination and communication with ICE?
 - Consider community relations/public relations staff
 - Determine outside counsel's role in the process
 - Will they have direct or indirect access to ICE?
 - If outside counsel will coordinate communications with ICE, have a Form G-28 Notice of Appearance ready to provide to ICE
 - Consider state law requirements to notify employees of an I-9 inspection or ICE raid or other state mandated employer obligations
 - Consider how the company will address notification to family members of employees?
- Determine whether there have been any past Social Security Administration or Internal Revenue Service mismatch notices
 - Determine past responses to mismatch notices
 - Determine past and present policies regarding mismatch notices
 - Respond to all mismatch notices
- Review all past practices regarding immigration and I-9 compliance processing and determine whether changes should be made and/or policies reinforced
- Have legal team, whether internal or outside counsel, involved in this stage of the process

At the Time of the Investigation

- Determine the type of investigation ICE is conducting
 - ICE may visit a worksite to conduct an I-9 inspection or to arrest employees who ICE believes lack immigration status or violated the terms of their immigration status
 - ICE will provide a Notice of Inspection (NOI) if performing an I-9 audit
 - The division of ICE known as Homeland Security Investigations conducts I-9 audits, while generally ICE's Enforcement and Removal Operations conduct arrests for immigration violations
- Call your lawyer – particularly if subpoenaed
 - If outside counsel will be speaking with ICE, contact outside counsel and provide ICE with outside counsel's G-28
 - Do not consent to ICE speaking to employees on premises – ask them to stop

- If ICE is performing an I-9 audit, insist on the 3 days' notice to provide I-9s to which you are entitled
 - If an I-9 audit only, request to have the I-9s delivered to the agent
- If ICE is at the worksite to arrest employees for potential immigration violations, ask to view ICE's warrant
 - Unless ICE has a Search and Seizure Warrant signed by a federal district court judge, ICE can only enter public areas of the worksite
 - If ICE has an administrative arrest warrant – Form I-200 (Warrant for Arrest of Alien) or Form I-205 (Warrant of Removal/Deportation) – ICE must still obtain consent to enter non-public areas of the worksite
- If you allow inspection on site, sequester agents away from employees and other business records (avoid onsite inspection if possible)
- Make and keep copies of ALL documents provided to ICE
- Obtain a receipt for any records taken
- Get name, telephone number, and card of lead ICE agent
- Prepare memorandum setting out what happened

The Day After

- Coordinate all conversations and communication through counsel as those conversation are privileged
- In an I-9 audit, respond promptly within ICE's 10 business-day window to cure technical/procedural paperwork within violations
- Terminate employees who ICE states lack work authorization, after giving them an opportunity to rebut; ICE will list these employees on a Notice of Suspect Documents
- Advise ICE of any response from employees as to status documents provided after ICE delivery of suspect documents information

Public Relations Concerns or Worksite Arrests

- Address employee and humanitarian concerns
 - Contact affected families
 - Inform employees that employer supports its employees
 - Inform employees that employer is dedicated to protecting its employees' privacy to the extent allowed by law
 - Inform employees of approved pro bono legal providers available at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map>
- Address enforcement and public relations concerns
- Note employer is willing to cooperate with ICE in investigation to ensure all laws are followed
- Emphasize that employer complied with the law by requiring its employees to complete a Form I-9 and/or participates in E-Verify and has not knowingly employed individuals who lacked work authorization

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.