

IMMIGRATION COMPLIANCE PROTOCOL

1. Be certain you have completed I-9 forms for all new hires, including U.S. citizens. Make sure that all staff who process new hires are trained to properly complete the I-9 process and are trained to properly complete the I-9 form. Periodically interview staff to make sure they are properly processing new hires. **Incomplete or improperly completed I-9 forms will result in exposure to liability!**
2. Complete the forms at the same point in the employment process for all employees - after you have made the decision to hire the person.
3. Periodically review your I-9 procedures, especially prior to the employment of seasonal workers. Conduct occasional "spot checks" to ensure the procedures are being followed and the forms are being filled out correctly. **Make sure your system is programmed to "flag" I-9s 90 days before the expiration date of any work authorization document!**
4. Periodically review your record retention practices. Be certain you keep I-9 forms on file for three years after the date of hire or for one year after termination of employment, whichever date is later.
5. Have a knowledgeable designated representative in place who is authorized to meet and talk with ICE or U.S. Department of Labor (DOL) personnel. Make sure that the representative knows when to contact the company's attorneys and owner(s).
6. Educate your employees to refer ICE or other government inquiries to your designated company representative. **All employees must be trained to inform ICE agents that the Company has a standard protocol implemented by legal counsel, and that the agents need to wait for the designated person to follow through on that protocol.**
7. No management employee should submit to an interview or provide documents to the ICE or other government agency without first conferring with your designated company representative. **Do not allow ICE to talk to any management or supervisory employee without the Company's attorney. Never give consent for ICE to speak with employees – if they try, stop them.**
8. **WHEN ICE SHOWS UP:** Determine who the investigators are. Ask for a business card. Make sure they really are with ICE. If you are suspicious, call the agency to verify their identity. **Contact your attorney immediately.**
9. Find out why the investigators are there.
 - **RAID:**
 - **Requires a search warrant (except within 25 miles of the U.S. Border, if the grower or his agent gives consent, if the government is in hot pursuit of an undocumented alien, or if the land is not being used for agricultural purposes, in which case no warrant is required).**
 - Does not require advance notice.
 - **I-9 AUDIT:**
 - **Requires three days' advance notice in writing – Even if the audit is part of a DOL drop in inspection – Always demand 3 days notice before showing anyone the I-9s, whether the request comes from ICE, DOL, or OSC (Office of the Special Counsel for Immigration-Related Unfair Employment Practices).**
 - No search warrant.
 - Sometimes, ICE agents will present a subpoena (in conjunction with an audit), suggesting that you need to comply with it immediately. ICE cannot use a subpoena to shortcut the 3 day notice period.
10. Stay calm. Be polite no matter how you feel. Losing your temper will only make matters worse. Don't refuse or delay providing documents you are legally required to provide. **Don't forget you can ask for time to compile the records requested by ICE agents.** Don't allow documents to be removed from your property without making copies, and don't turn over more documents than the law requires. Nothing in the law requires you to give ICE original I-9 forms or to make photocopies of I-9 forms.
11. **IN A RAID:** The search warrant should identify the agency or officers, the location to be searched, the specific items or individuals to be seized (if known), and an expiration date for the court order. A warrant is a court order giving the agent(s) permission to search your property, but agents are not entitled to search outside the scope of the warrant. Resisting a warrant may result in contempt of court. **Make an inventory list of the areas searched and the items and computer files seized. Contact your immigration attorney as soon as possible for advice on your obligations.**
12. During a raid, you may accompany ICE officers on their search. **Always take notes on everything that is occurring.** Make note if any unusual or disturbing behavior occurs (such as "badgering" employees or questioning only foreign-appearing employees.) Don't do anything that could get you into more trouble. Do not hide employees, advise them to run or hide or help them escape from the premises.
13. **IN AN I-9 AUDIT:** You are technically required to produce only the I-9 forms for inspection. If ICE wants to see anything else, you can require the agent to get a valid subpoena. You are not required to keep or produce photocopies of the documents employees presented to establish identity and/or employment eligibility, so don't do it. **If the audit is going to be on Company premises, be sure to sequester the ICE agents to limit their access to the business. If the agents cannot be sequestered, then the Company will deliver copies to the agency for the audit.** If, while preparing for the audit, the employer discovers errors on I-9s or missing forms, it should not correct the errors prior to the audit. **Federal regulations allow employers 10 business days after notification of a technical error on the I-9 to correct the error, and most minor technical problems can be corrected during this period.** If an I-9 is missing altogether, then the employer should immediately have the employee complete an I-9. **Never back date an I-9 to the date of hire!**
14. Know your rights. For example, no one is required to answer any questions. **Make sure you consult with your attorney before giving agents access to employees or management, or before allowing any press contacts.** Also, you have the right to continue operating your business during the ICE visit.