

# The San Diego Union-Tribune

## When ICE comes to your workplace

**What employers and employees should know about expected increased activity in the workplace.**

By [Dan Eaton](#) UPDATED: March 24, 2025 at 9:58 AM PDT

I recently attended an informative webinar that addressed how an employer should handle the Immigration and Customs Enforcement's (ICE) expected increased activity in the workplace. The presenters were attorneys Jonathan Wong and Stephanie Gonzalez of the Oakland office of Donahue Fitzgerald, part of a law firm alliance to which my firm also belongs.

Wong heads the firm's nationality and immigration law practice. Gonzalez practices in the firm's employment and litigation departments. Their condensed and edited responses to my emailed questions appear below. As with all information presented in these columns, the information below is for informational purposes only and is not legal advice.

### **What should an employer do when an ICE agent comes to the workplace to do an inspection?**

As with any law enforcement, employers should confirm the agents' identities by asking for official identification and confirm the purpose and scope of the visit. Agents may not enter a nonpublic space without either the employer's consent or a valid warrant signed by a federal or state judge.

ICE agents do not need a warrant or the employer's consent to enter public spaces. An employer should not prevent ICE agents from entering public spaces or attempt to prevent ICE enforcement actions in public spaces.

### **What if the agent presents an administrative warrant not signed by a judge?**

If the warrant is not signed by a judge, the employer may refuse entry to the agents. If ICE agents insist on entering the space without a judicial warrant or the employer's consent, the employer should not interfere and instead note the actions taken by the ICE agents for the employer's records.

### **May ICE agents show up unannounced?**

Yes, but that does not mean they have the legal authority to enter or search a space or review documents. ICE, however, has the right to audit an employer's employment eligibility verification form (I-9) records without a warrant, upon 72 hours' written notice. This right extends only to I-9s—no other personnel records. ICE agents sometimes have provided employers with courtesy notice of an upcoming warrant-authorized search. We expect those courtesy notices to cease under the Trump administration.

## **What notice does California law require an employer to give its employees when it learns ICE is coming?**

Under [AB 450](#), California employers must notify all employees, plus the employees' union representative, if any, of an I-9 inspection no later than 72 hours after receiving the notice. Notification must be in the language the employees normally use, even if they also use English at work. The Division of Labor Standards Enforcement has posted [FAQ about AB 450](#) and a [template](#) for the employee notice.

## **What duties does an employer have to protect its employees' privacy?**

California employers have a duty to protect the privacy of private and confidential employee information. This means employers cannot share an employee's personnel records or personal information with ICE without a warrant, subpoena, or the employee's consent. An exception to this is when ICE gives the employer 72 hours' notice of an I-9 audit.

Employers should be careful when providing I-9 records to ICE agents for an audit to ensure only the I-9 records and not other personnel records are being provided. Employers may place an employee's I-9 records in a separate, removable jacket inside the personnel file or keep I-9 records in a separate file. Employers with automated personnel systems may have additional options.

## **What liability does an employer face for violating its employees' privacy rights in connection with ICE inspections?**

An employer may face lawsuits and civil penalties for sharing an employee's private confidential information with ICE without a valid warrant, subpoena, or the employee's consent.

## **An employer may not legally impair an ICE investigation. What specifically should an employer not do?**

Employers should not hide or secrete employees. While an employer may inform employees of their constitutional rights, such as their constitutional right to remain silent when being questioned by ICE, employers should not tell employees how or when to exercise those rights. Employers should not tell their employees not to come into work because ICE agents will be at the workplace, though employers can inform employees of when ICE agents will be at the workplace and let employees decide for themselves whether to come in.

*Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at [eaton@scmv.com](mailto:eaton@scmv.com).*