

Immigration Enforcement Checklist

California employers must comply with strict rules passed under the Immigrant Worker Protection Act which protects workers in the state from immigration enforcement while they're on the job. Under the Act, all employers, regardless of size, must limit Immigration and Customs Enforcement (ICE) agents' access to both the worksite and employee records, and they must follow notice obligations.

☐ **Require a Judicial Warrant for Access to Private Areas**

- Don't provide ICE access to non-public areas of your business until ICE has provided you a judicial warrant. You cannot voluntarily consent to providing ICE access to private areas.
 - Example of "voluntary" consent: Freely opening doors to private areas for the agent without the judicial warrant.
- Verify the judicial warrant.
 - You can take the agent to a nonpublic area to verify the warrant, as long as employees are **not** present and you don't provide voluntary consent to search nonpublic areas in the process.
 - A judicial warrant is a warrant that has been reviewed and signed by a judge upon finding of probable cause. The name of the issuing court will appear at the top of the warrant. Here is a sample [judicial warrant](#).
 - Documents issued by a government agency (but not issued by a court and signed by a judge) are not judicial warrants. An immigration enforcement agent may show up with something called an "administrative warrant" or a "warrant of deportation removal." These documents are not judicial warrants.
 - Consult legal counsel if you have any questions about a warrant.
- Train front-line staff, HR and other employees who are in charge of access to your facility on the requirements, and make sure they know what type of legal documents ICE must present before ICE agents can enter.
- Designate a point person for front-line staff to contact if your staff has any questions about access.
- Consult legal counsel if you are unsure which areas of your business are public vs. non-public.

☐ **Require a Judicial Warrant or a Subpoena for Access to Records**

- Don't provide employee records to ICE until you have received a proper **subpoena** or **judicial warrant**. You cannot voluntarily consent to allowing ICE to access, review or obtain employee records.
 - Example of "voluntary" consent: Freely opening a file cabinet containing employee records for the agent.
- A judicial warrant or subpoena is **not** required for I-9 Employment Eligibility forms and other documents for which a Notice of Inspection (NOI) was provided to your Company.
- A subpoena is a legal document demanding the appearance of a witness or the production of documents or other evidence at a specific time and place. A government agency or an attorney can issue a subpoena without prior court approval (if the agency or attorney is authorized to issue subpoenas under the law). The subpoena must describe the particular information sought.
- Train those who are in charge of access to your facility and/or access to records on the requirements, and make sure they know what types of legal documents are required before ICE can access records.
- Consult legal counsel if you have questions about the validity of a judicial warrant or subpoena.

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☐ Provide Notice of Any Record Inspection Within 72 Hours

- **Post a notice** to all current employees informing them of any inspections of *Forms I-9* and other employment records within **72 hours** of receiving a NOI.
- Include all of the following information in the posting:
 - The name of the immigration agency conducting the inspection;
 - The date the employer received notice;
 - The nature of the inspection, if known; and
 - A copy of the NOI.
- Use the template provided by the California Labor Commissioner; the *Notice to Employee: Government Inspection of Employment Eligibility Records* contains all of the above information and will satisfy your posting requirement (available in [English](#) and [Spanish](#)).
- Post the notice in English and in any other language typically used to communicate employment-related information.
- Give the notice to the collective bargaining representative, if any.
- Provide a copy of the NOI to an employee upon reasonable request.
- Make sure you meet the required 72-hour timeframe.

☐ Communicate Inspection Results Within 72 Hours

When the inspection is over, you have further notice obligations with respect to “affected employees” — employees identified by the inspection results as potentially lacking work authorization or having document deficiencies.

- Give **each** affected employee a written notice within **72 hours** of receiving the inspection results. The notice should relate only to the affected employee.
- Provide the notice to the affected employee’s collective bargaining representative, if any, within the same 72-hour timeframe.
- Include **all** of the following information in the notice:
 - A copy of the agency’s written notice providing the inspection results (this is often called a Notice of Suspect Documents);
 - A description of the employer’s and affected employee’s obligations arising from the inspection;
 - A description of all the deficiencies or other items identified in inspection results that relate to the affected employee;
 - The time period for correcting any identified deficiencies;
 - The date and time of any meeting(s) with the employer to correct the deficiencies; and
 - The employee’s right to representation during this meeting.
- Hand-deliver the notice at the workplace.
 - If hand delivery at the workplace is not possible, you must deliver it by mail **and** email (if email address is known) and to the collective bargaining representative, if any.
- Meet all required timeframes and notice requirements.

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☐ **Comply with Federal Reverification Requirements**

- State and federal law prohibit unlawful reverification of employment eligibility, such as reverification of unexpired documentation.
- Know the rules regarding when you can and cannot reverify employment eligibility.
- Don't reverify unexpired Employment Authorization Documents or comb through all of your employees' *Forms I-9* asking for reverification.

☐ **Review Information Provided by the Attorney General and Labor Commissioner**

- *Immigrant Worker Protection Act - Advisory Memorandum*
- *Immigrant Worker Protection Act Frequently Asked Questions*

☐ **Consult Legal Counsel with Any Questions**

- Employers that provide access to ICE in violation of the Act or who fail to comply with the notice requirements can be fined anywhere from \$2,000 to \$5,000 for a first violation and \$5,000 to \$10,000 for each subsequent violation. Violation of the employment eligibility reverification provision can result in a \$10,000 state and civil penalty, as well as federal penalties.