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WARNING SIGNS THAT AN IMMIGRATION RAID OR WORKSITE ENFORCEMENT ACTION MAY BE IMMINENT

Introduction

At the time it occurs, a worksite raid or enforcement action by agents from US Immigration and Customs Enforcement (ICE) most often comes as a shock to the company involved and its employees. However, most such actions, particularly the larger ones, involve multiple law enforcement agencies from the federal, state and local level and require significant advance planning. Therefore, it is possible to recognize preparations by law enforcement officials, and other signs within the community and workplace as possibly foreshadowing such actions. The goal of this paper is to summarize some of the most common warning signs so that they can be recognized *before* an action or raid takes place. If an employer observes or is aware of any such warning signs, it should contact counsel immediately in order to plan an appropriate response before-hand.¹

¹ It goes without saying that the best way for an employer to avoid a worksite enforcement action by ICE is to take all reasonable steps to avoid employing undocumented workers and to comply with its Form I-9 filing responsibilities. At the same time, employers should welcome the contributions of all their documented workers, without regard to their nationality or immigration status. It is important to remember that the law prohibits workplace discrimination on the basis of national origin or citizenship. For more discussion on employers responsibilities under the *Immigration Reform and Control Act* (“IRCA”) §§ 274A, 274B and 274C; 8 U.S.C. §§ 1324A, 1324B and 1324c, see [An Employer’s Introduction to Immigration Law and Worksite Enforcement](#).

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1. Scouting or Other Suspicious Activities by ICE or Local Law Enforcement Agents:

ICE and other cooperating law enforcement agencies rarely conduct a raid without first scouting out the premises. The agents will likely want to know of the size of the facility, its physical lay-out, and points of entrance and egress. Agents will likely drive by the facility and survey it from off-site. In addition, ICE or local law enforcement agents may visit a facility under the ruse that they are “looking” for a certain individual, and ask if they can “look around” or to speak to a company representative. In doing so, they may give a non-immigration related reason for the interest in the individual.²

2. A Company Receives a Large Volume of No-Match Letters from the Social Security Administration:

According to the Social Security Administration’s (SSA) [website](#), every year the SSA informs thousands of employers via a letter entitled ‘Employer Correction Request,’ commonly known as a ‘No-Match’ letter, that the Social Security numbers employers provided on W-2 Forms for certain employees do not match SSA records.”

As of September 25, 2008, [SSA](#) policy is to send no-match letters “to any employer who reported more than 10 no-matches that represented more than 0.5% of the W-2s submitted by that employer.”

² Every employer should have in place a protocol on how to respond to such visits or requests from law enforcement, which includes not consenting to an entry without a warrant, and immediately contacting counsel.

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An employer should not overreact to the receipt of one or even several No-Match letters, since in many instances the discrepancy is attributable to something as innocuous as a typographical error. However, an employer should take notice if it receives a steady stream or large volume of no match letters. In certain investigations, ICE has used the receipt of large numbers of No-Match letters as a basis to obtain search warrants to conduct worksite raids, and relied upon such letters to prove that the employers knew the status of their undocumented workers, or had acted in reckless disregard to their workers' undocumented status.

If an employer receives a large number or steady stream of No-Match letters it should take proactive steps to determine if it is unwittingly employing undocumented workers by retaining outside counsel to conduct an audit of its Form I-9 compliance system. If the employer fails to do so and continues to conduct business as usual, it is increasingly likely that ICE will learn of such letters and take its own action.

III. Regulatory I-9 Audits by ICE or the Department of Labor:

ICE and two offices within the Department of Labor (DOL) have the authority to conduct regular audits of an employer's Form I-9s without probable cause to believe that any violations have taken place. ICE's authority stems from the enforcement provisions of the *Immigration Reform and Control Act* (IRCA)³, which gave birth to the Form I-9. Although DOL inspections are intended to uncover non-immigrant labor violations, the agency reports I-9 violations to ICE.

³ See *Immigration and Nationality Act* (INA) §§ 274A, 274B and 274C; 8 U.S.C. §§ 1324A, 1324B and 1324c.

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An audit that uncovers widespread discrepancies in an employer's Form I-9 compliance system is increasingly likely to lead to a criminal enforcement action by ICE.

IV. The Arrest of Undocumented Workers by Local Law Enforcement:

As illegal immigration has become more of a hot-button issue, state and local government, and law enforcement agencies have increasingly taken an interest in the matter, and now routinely forward information regarding undocumented immigrants to ICE.

A number of recent ICE worksite investigations began when ICE received tips from local police departments that had arrested undocumented workers for other non-immigrant offenses.

If an employer learns that an employee has been arrested, and that the investigation has revealed that he or she is undocumented, the employer should expect this information will be passed on to ICE.

V. Rumors within the Community:

The large ICE enforcement actions that have occurred in the last couple of years have involved hundreds of agents. Such agents must be brought in from all over the country. Temporary housing for the agents and other logistical arrangements such as preparing the local court system or detention facilities for an expected large influx of defendants and detainees take a considerable amount of time and effort. Such preparations are often noticed by members of the community.

For example, on August 25, 2008, ICE conducted the largest worksite enforcement action in history, targeting Howard Industries Inc., an electric transformer manufacturing facility in Laurel Mississippi,

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and arrested approximately 595 workers who were believed to have been undocumented. **Three days earlier**, on August 22, 2008, the Mississippi Immigrants Rights Alliance issued the following warning:

A series of preparations by Immigration and Customs Enforcement (ICE) on the Gulf Coast has local advocates on edge about the possibility of yet another worksite raid, and yet another devastating blow to businesses, families and communities in the name of immigration enforcement. ...

VI. Increase in Level of Complaints Arising within the Local Community:

Like all enforcement agencies, ICE relies upon tips from members of the community to identify potential wrong-doing.

If an employer observes an increase in the number and volume of complaints regarding undocumented workers in a community, for example in the form letters to the editors of newspapers or on talk radio, the employer should assume that ICE is receiving a corresponding increase in the number of tips.

VII. Hostility within the Workplace Toward Foreign Nationals:

Like most law enforcement agencies, ICE solicits anonymous telephone tips “to report any suspicious activity or ... immigration or customs violations.” *See*. It has been widely reported that ICE’s investigation of Howard Industries in Mississippi, which culminated in the August 25, 2008 raid, began when ICE received tips and complaints by unionized employees of the company who

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were angry at what they saw as an unfair distribution of overtime opportunity in favor of undocumented workers.

It is an unfortunate fact that in times of economic uncertainty and distress, immigrants increasingly become the target of suspicion and anger by some of their co-workers and members of the larger community. It is likely that as the downturn in the American economy continues (and perhaps worsens) more and more communities and worksites will become areas of contention between native born and foreign born workers, even if the foreign born workers are documented and legally entitled to work in the United States. Employers should be aware of such conflicts as they may result in a loss of productivity at the worksite, the employer's loss of standing within the community, and in complaints being made to, and actions by, ICE.

VIII. Conclusion: Employers Must Take Proactive Steps to Avoid a Raid and the Resulting Damages:

The best way for a company to avoid a raid is to ensure that it is not, even unwittingly, employing undocumented workers. In order to do so, an employer must make certain that its Form I-9 compliance policies and procedures are adequate to the task, and that its agents have the training and tools they need to carry them out. Given the complexities of this area of the law, companies, especially larger ones, should seek outside expertise to ensure compliance. Such steps, if proactive, will result in a decreased likelihood of a worksite raid or enforcement action by ICE. This is particularly important because a raid, even if no undocumented workers are uncovered, is extremely disruptive to the company targeted, can damage its representation with the public and clients, and is

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extremely intimidating to employees, especially foreign nationals who are documented and legally entitled to work in the United States. Moreover, a raid will likely uncover any existing Form I-9 compliance violations, which can result in hefty fines against the company. As discussed in more detail in the GoffWilson White Paper, [*An Employer's Introduction to Immigration Law and Worksite Enforcement*](#). The average compliance rate of Form I-9s for companies audited by GoffWilson is only 15%. In addition, when violations are discovered fines are leveled against the company regardless of the actual presence of undocumented workers, and often even if the violations were unintentional. If an employer becomes aware of one or more of the potential signs of an impending raid, it should contact its in-house, and in most cases outside, counsel immediately so that it is in a better position to respond to the government's concerns and protect its own rights if and when such a raid occurs.