

KANSAS FARM BUREAU LEGAL FOUNDATION

Immigration Issues Facing Kansas Agriculture Employers

In light of recent developments in the enforcement of immigration laws in the U.S., we have received some questions from our members regarding what they need to know and do if there is a raid by U.S. Immigration and Customs Enforcement (ICE) or local law enforcement officials at their business. Here are some basic pointers, each of which is discussed in more depth below:

1. Have a completed Form I-9 for ALL employees.
2. Designate one employee to coordinate with government officials (and have a backup).
3. Know what to do in the event government agents visit or enter your facility.
4. Find an immigration attorney in your area available to help.

Have a completed Form I-9 for ALL employees:

Employers must verify work status and have a completed Form I-9 for all employees hired after November 6, 1986, even for family members of the employer and for temporary employees. If your business has several employees, a consolidated file with the Form I-9 for all employees, rather than keeping the Forms I-9 in a separate personnel files for each employee, could help limit and streamline the response to government agents in the case of a routine I-9 compliance visit or a raid or other search by government agents. For guidance on completing Form I-9, refer to the employer handbook prepared by U.S. Citizenship and Immigration Services, which is available online at: <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

If you are considering using the E-Verify online system to verify the status of new employees (rather than using the paper Form I-9), you may want to visit with an employment law or immigration law attorney. There are many pros and cons to the E-Verify system that should be considered before taking the leap. You can learn more about E-Verify here: <https://www.uscis.gov/e-verify>.

Designate an employee for immigration issues:

Employers should strive to be prompt and professional in their response to government agents. It is highly recommended that one employee (with one or more

backups) be designated to coordinate with government agents. The human resources manager, or another manager or supervisor, would be good choices to serve in this role. Responses to written requests for information, and to in-person visits by agency officials, should be coordinated by the designated employee.

Know what to do in the event government agents visit or enter your facility:

The designated employee should be the sole point of contact in the event government agents visit or enter your facility. Make sure all of your employees know who is the designated employee to coordinate with government agents on immigration issues, and let other employees know that they should not discuss matters with the agents or grant permission to the agents for access or information.

When government agents enter a facility for immigration purposes, the encounter could have varying degrees of contact. Agents may come to a facility for a standard Form I-9 compliance inspection. Employers should generally receive a written Notice of Inspection at least 3 days before the inspection. These inspections, however, can also be performed without such notice through a subpoena or a warrant. Government agents performing these inspections could be officials from the Department of Homeland Security (including its enforcement arm, U.S. Immigration and Customs Enforcement), employees from the Immigrant and Employee Rights Section at the Department of Justice, or employees from the Department of Labor. An increased number of seemingly routine contact from government agents *could* indicate an ICE raid will occur in the near future.

A raid, and the search and seizure of evidence pursuant to a criminal investigation, are different from a standard I-9 compliance visit, and may be performed, in most cases, only with a warrant or by permission (so be careful about granting agents permission for their activities). These types of encounters can be unsettling, so it is important to be prepared and have a list of things to do in advance.

Here are some things that should be done in the event of an unannounced visit to your facility by government agents:

1. Make sure the designated employee (or their backup) is the only person working with the government agents.
2. Obtain identification from the government agent, including agency name, agent name, title, and phone number.
3. If the visit is unannounced, ask the agent if the agent is there solely to ask questions, or if the agent plans to conduct a search and seizure.
 - If the visit is to ask questions, only, then make a phone call to your attorney and discuss whether your attorney should be present for the meeting with the government agent.
4. If the agent is there to conduct a raid or search and seizure, then obtain a copy of the warrant authorizing the search or seizure. Without a warrant, the agent may not have authority to take certain actions. Review the warrant to learn the scope of the search or seizure.
5. Ask to contact your attorney and have them present. If this request is denied by the government agent, direct another staff member to contact your attorney so that the designated employee can continue to coordinate with the agent.
6. Immediately send a copy of the warrant to your attorney.
7. Comply with instructions from government agents, and don't try to obstruct their search and seizure.
8. Warn agents about any potential dangers at your facility, such as large animals or equipment.
9. Obtain a government agent-signed copy of an inventory of all items seized. Employees should refrain from signing the inventory if asked by government agents to sign it. The company should make its own list of items seized and actions taken by the agents, and even video record the encounter, if possible.
10. Finally, make a plan for how to handle contacts by the media, such as designating a spokesperson, and communicating expectations to all employees.

Find an immigration law attorney:

If you have questions regarding your current I-9 compliance, you should consider contacting a qualified immigration attorney to perform an in-house audit of your I-9 compliance.

If an I-9 visit, ICE raid, or criminal search and seizure occurs at your business, you may have legal questions about your responsibility, or about the encounter, in general. It would be helpful to know, in advance, of immigration attorneys in your area that are available to help. We maintain a list of immigration attorneys, and can provide you with some names of attorneys who may be available to help in your area, if you need such assistance.

Disclaimer: This document is intended for informational purposes only and NOT provided as legal advice. Additionally, this document does not and shall not be construed to establish an attorney-client relationship. If you have legal questions, you should contact a private attorney for advice relating to your specific facts and circumstances.