



Immigration Issues Facing Kansas Agricultural Employers – 2026 Update

It is hard to believe we last wrote about immigration nine years ago. While much has changed in immigration in nine years, so much remains the same. The U.S. immigration system has had relatively little legislative change in the last 40 years, during which time the number of foreign-born workers has grown to around 19% of the workforce.^[1] In agriculture, foreign workers are largely obtained through the H-2A visa program.^[2] The H-2A program is for seasonal workers and authorizes initial employment for only 10 months, making it suboptimal for many Kansas agricultural employers -- especially those with livestock requiring a steady year-round labor force. Moreover, the cost to participate in the H-2A program can be prohibitive for some employers. History has taught us, though, that change to the U.S. immigration system can be difficult, if not impossible. To learn more about immigration reform efforts, visit the American Farm Bureau Federation website.³ The remainder of this resource, however, will focus on the current state of immigration, and what employers need to know before federal agents make a visit to their business.

Did You Know?

If a domestic worker applies to a public posting of a position, regardless of whether they show up for work or last the whole season, that position is no longer eligible for an H-2A worker. In fiscal year 2025, only 182 positions, less than 0.04% of the 415,000 nationwide advertised positions, received a domestic applicant.¹

WHAT TO DO WHEN GOVERNMENT AGENTS VISIT YOUR BUSINESS

1. Make a plan and designate a representative for the business to interact with agents
2. Know the extent of compliance needed
3. Form a relationship with an immigration attorney BEFORE you need one

FIND ADDITIONAL

 **RESOURCES ON THESE LABOR ISSUES ON THE LEGAL FOUNDATION'S WEBSITE:**

- Agricultural Employment
- Fair Labor Standards Act
- Immigration
- Youth Labor



WHAT TO DO WHEN GOVERNMENT AGENTS VISIT YOUR BUSINESS, *CONT'D*

1. Make a Plan

It can be stressful when government agents visit a business, so it is important to have a plan in place to make sure that the business can be professional in its response, without permitting more access, or divulging more information, than legally required. The first part of that plan should be to have a designated representative, and a backup, named as the point of contact for these types of visits. It will be their responsibility to know how to respond to agents during a visit, while all other employees can be trained to state that they do not have authority to grant permission for entry, or to provide information, because the company has a designated responsible party who is the only person allowed to do that.

2. Know the Extent of Compliance Needed

Government agents may have very different purposes for visiting a business, and the designated representative should be able to distinguish between those purposes because that will impact the business's response obligations. The designated representative should ask the agent for their credentials and for the purpose of the visit. A visit by ICE could be for an administrative inspection of paperwork (I-9s), where an employer typically receives notice in advance of the inspection, and there is an additional response time after the visit in which the employer can provide the requested documents for audit.^[4] This timing generally allows consultation with an attorney before any official document response is made.

On the other end of the spectrum is an ICE raid, where ICE appears without notice, and is there for enforcement purposes, that can involve searches and seizure of information, along with arrests that could ultimately lead to the deportation of employees. In either circumstance, extra or eager compliance with ICE demands is unnecessary, and could lead to more issues in the future.



WHAT TO DO WHEN GOVERNMENT AGENTS VISIT YOUR BUSINESS, CONT'D

Generally, persons should refrain from giving ICE agents permission to enter spaces they are not legally entitled to enter. The designated representative should know what to look for in a warrant or subpoena provided by ICE agents (for example, What is the scope? Was it issued under judicial or administrative authority?). Check out the resources in this end note to learn more about immigration compliance issues, with helpful information for designated representatives to prepare for a possible ICE visit.^[5]

3. Form a Relationship With an Immigration Attorney BEFORE You Need One

Establishing a relationship with the right immigration attorney before their help is needed can help save time and uncertainty in the event of a visit by ICE. Keep in mind that a business may need more than one attorney because immigration attorneys can be specialized – some help with documentation, while others help with enforcement and deportation matters. Once an attorney-client relationship has been established, businesses may find it useful to have an internal compliance audit performed by their attorney prior to any contact from government officials.

At any point during an ICE visit, the designated representative may contact the business's attorney, or ask another staff member to contact them, to help discern the business's rights and responsibilities during the visit. The attorney will want to see a copy of any warrant as soon as possible, and may want to be present for any questioning of employees by ICE.

If you need help finding an immigration attorney, the Kansas Bar Association (KBA) or the American Immigration Lawyers Association (AILA) may be able to help.^[6]

Should the ICE Visit Be Recorded?

Advice is mixed on whether individuals should record interactions with ICE, even though the First Amendment protects a person's right to do so. Video recordings of ICE interactions can be instrumental to correct the wrongs of ICE agents, or to seek recourse for such wrongs. Recordings must be done in a way that does not obstruct the agents' ability to do their jobs. Moreover, recording ICE interactions can sometimes escalate already tense situations.

KEY TAKEAWAYS

Immigration enforcement is an evolving space and could be very impactful for agricultural employers of foreign-born workers. The best course of action for employers of foreign-born workers is to learn, in advance, about what rights and responsibilities they have during a visit by federal agents, and to have a plan of action so they are not caught off-guard if a visit occurs for either audit or enforcement purposes.

END NOTES

^[1] Foreign-Born Workers: Labor Force Characteristics – 2024, by the Bureau of Labor Statistics with the U.S. Department of Labor, May 20, 2025, available at <https://www.bls.gov/news.release/pdf/forbrn.pdf> (last accessed Mar 3, 2026). H-2A Program Use Continues to Soar, Market Intel, by Samantha Ayoub with American Farm Bureau Federation, Jan 22, 2026, available at: <https://www.fb.org/market-intel/h-2a-program-use-continues-to-soar> (last accessed Mar 3, 2026).

^[2] Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA), from the Wage and Hour Division of the United States Department of Labor, Feb 2010, available at: <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A> (last accessed Mar 3, 2026).

^[3] Immigration Reform resources can be found on the American Farm Bureau Federation website here: <https://www.fb.org/topic/immigration-reform> (last accessed Mar 3, 2026).

^[4] 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. 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> (last accessed Mar 3, 2026). 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>.

^[5] Navigating ICE and DHS Enforcement in the Agricultural Workplace, a webinar by Misty Wilson Borkowski, for the National Agricultural Law Center, Feb 4, 2026, available at: <https://nationalaglawcenter.org/webinars/ag-employer-ice-dhs/> (last accessed Mar 3, 2026). The accompanying slides are also available, and even show examples of judicial and administrative warrants and subpoenas so you can learn the differences: <https://nationalaglawcenter.org/wp-content/uploads/assets/Webinars/Navigating%20ICE%20and%20DHS%20Enforcement%20in%20the%20Agricultural%20Workplace.pdf> (last accessed Mar 3, 2026).

What if immigration enforcement shows up at your farm?, by Forrest Laws for Delta FarmPress, Feb 25, 2026, available at: <https://www.farmprogress.com/farm-policy/what-if-immigration-enforcement-shows-up-at-your-farm-> (last accessed Mar 3, 2026).

What to Do if Immigration Comes to Your Workplace, by the National Immigration Law Center, Jan 2025, available at: https://www.nilc.org/wp-content/uploads/2025/01/NILC_EmployerGuide_English.pdf (last accessed Mar 3, 2026).

^[6] The Kansas Bar Association has an attorney referral service, where members of the public can submit a request online. The referral website is available at: https://ksbar.org/?pg=irs_public (last accessed Mar 5, 2026). The American Immigration Lawyers Association has a search function on its website to help find member attorneys. That website is available at <https://ailalawyer.com/> (last accessed Mar 5, 2026).

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