

# ICE Increases Enforcement and Workplace Visits

The shifting priorities of Immigration and Customs Enforcement







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*You should care who you work with—your staffing partner is an important ally.*

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## Changes in Priorities

During President George W. Bush’s administration, workplace raids by Immigration and Customs Enforcement (ICE) took hundreds into custody, spread fear among employees not authorized to work in the U.S., and caused many to skip work. During President Barack Obama’s administration, audits of companies’ paperwork and fines increased while employee arrests decreased. President Trump’s team is visibly focusing on increasing immigration enforcement. **The Trump administration is using a combination of tactics directed at both employers and employees**, according to an article in *The New York Times*, “Workplace Raids Signal Shifting Tactics in Immigration Fight.”

-  Stricter enforcement
-  More worksite arrests
-  Larger employer fines
-  Greater inter-agency cooperation

## Changes in Workplace Arrests

**The pace of workplace visits and arrests has increased.** This year has seen the largest workplace raid in ten years, as reported in the *Washington Post* article, “ICE raids meatpacking plant in rural Tennessee; 97 immigrants arrested.” Dozens of convenience stores were visited by ICE as well, according to “Immigration agents descend on

7-Eleven stores in 17 states,” an *AP News* piece. Clearly, employers and contingency staffing agencies should pay attention.

Of particular note, the 7-Eleven visits resulted from a referral to ICE from the IRS, who had been conducting their own investigation into the company, according to the *Lexology* article, “ICE Now Taking More Opportunistic Approach to Employer Sanctions.” *This points to increasing cooperation between federal agencies.*

In the past, employers might be instructed to merely fire undocumented employees. Now, ICE is requesting that employers have employees on site during ICE visits, for potential arrest, according to the *Bloomberg News* article, “Departing ICE Chief Leaving Legacy of More Work-Site Enforcement.”




*“We’re going to enforce the laws on the books without apology.” — Acting ICE Director Thomas Homan in The Hill, “ICE carries out largest workplace raid in a decade: report”*

## Increased Attention on the Staffing Industry and its Clients

**An attorney that specializes in monitoring and advising the staffing industry on immigration related issues emphasizes that clients need to have their contracts and paperwork in good order.** In five recent investigations of staffing agencies, ICE agents’ searches spread to records in multiple offices, to contracts with diverse clients, across sectors and geographic regions. Much of the enforcement has focused on distribution centers, warehousing, and

related transportation operations, but ICE is not limited to any business size or industry. Nor is there a discernable protocol—investigations can result from anonymous tips, audits, interagency referrals, or investigations that follows networks and contracts between staffing agencies and clients—allowing ICE many points of entry.

### ICE Ramps Up Resources

-  10K Additional agents hired in the last 2 years
-  Employer visits increased 3–4 times
-  Investigations last 3–4 times as long

### Changes in Fines

It is hard to anticipate the precise cost of violations, due to inconsistencies in how the fine structure has been applied, reports *Bloomberg News*. **In general, fines are higher**, and the employer of record pays, but joint liabilities are certainly on the table, especially if an investigation can show that each party had awareness of the situation.

### Excerpted ICE Fine Schedule

#### Standard Fine per Employee for **Knowing** Violations

| Violation Percentage | First Tier | Second Tier | Third Tier |
|----------------------|------------|-------------|------------|
| 0% - 9%              | \$548      | \$4,384     | \$6,575    |
| 50% or more          | \$3,726    | \$10,026    | \$19,242   |

#### Standard Fine per Employee for **Substantive** Violations

| Violation Percentage | First Tier | Second Tier | Third Tier |
|----------------------|------------|-------------|------------|
| 0% - 9%              | \$220      | \$1,096     | \$2,191    |
| 50% or more          | \$1,862    | \$2,191     | \$2,191    |

#### Both Types of Fines May Be Applied Simultaneously

| Violation Percentage | First Tier | Second Tier | Third Tier |
|----------------------|------------|-------------|------------|
| 0% - 9%              | \$768      | \$5,480     | \$8,766    |
| 50% or more          | \$5,588    | \$12,217    | \$21,191   |

Adapted from the “Form I-9 Inspection Overview” page of the U.S. ICE website.

PLUS: Fines may be increased up to 25% based on aggravating factors: business size, good faith, seriousness, unauthorized aliens, and history.

**Knowing Violation:** Employer is determined to have knowingly employed those not authorized to work in the U.S.

**Substantive Violation:** Forms I-9 should have been prepared or corrected but were not.

**Violation Percentage:** The number of employees in violation divided by the total employees.

**Tier:** Number of times a company has been in violation (e.g., a second tier fine is assessed to a second-time violator)

### Rely on Your Staffing Provider

All brands at Employbridge use E-Verify when screening our associates which should give our clients a high degree of comfort they won’t get from many of our competitors. Make sure your staffing provider is prepared to assure your contingency workforce can pass I-9 inspection, so your company can avoid fines and disruption of operations. **Westaff prides itself in having long experience as a reliable ally in maintaining immigration compliance.**

“What you’re going to see more and more of is these large-scale compliance inspections, just for starters.” — *Derek Benner, Acting Head of ICE’s Homeland Security Investigations, in AP News*

**You should care who you work with—your staffing partner is an important ally.**

The information herein is provided for informational purposes only and not for the purpose of providing legal advise. You should contact your attorney to obtain legal advise.

*Presented by Keith Wisner, Vice President, Workforce and Supply Chain Analytics*

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