

# Alert

## White Collar Defense, Regulatory & Investigations

Weil

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### Summary

As immigration policy evolves, a renewed emphasis on worksite enforcement is poised to have significant implications for businesses across the United States. The latest directives signal a shift toward stricter scrutiny of employer compliance with immigration laws, including increased audits, inspections, and penalties for hiring unauthorized workers. For companies in industries such as agriculture, construction, hospitality, and manufacturing—where immigrant labor is often essential—these changes could disrupt operations, increase legal exposure, and reshape hiring practices. Indeed, it is our understanding that U.S. Immigration and Customs Enforcement (ICE) is gearing up for a shift to worksite enforcement to capitalize on low-risk operations that generate large numbers of arrests. For example, in early May, federal authorities arrested 33 individuals in a sweep of construction sites in Florida.<sup>1</sup>

This client alert, which is informed by our experiences in defending companies against workplace raids, describes how new focus on worksite enforcement may impact businesses, highlighting the risks, responsibilities, and steps companies should consider to stay compliant in a changing regulatory environment.

### Immigration Enforcement Priority

In October 2021, during the prior administration, ICE was directed to stop conducting mass worksite raids.<sup>2</sup> Given that administration's focus, hiring considerations were predominantly driven by anti-discrimination concerns as opposed to validating documentation, which had a substantial impact on hiring process and procedure. While employers must take steps to validate employees' work authorization, anti-discrimination laws limit the lengths employers may go to inspect work authorization documents. For example, an employer is limited to asking workers to provide their choice of work verification documents from a specified list promulgated by USCIS.<sup>3</sup> Any attempt by the employer to ask for more or different documentary evidence of a worker's employment status can be punished as document abuse.<sup>4</sup> These provisions often disincentivize employers from attempting to verify suspect documents, which can make it appear the company is knowingly turning a blind eye to fake documents, when in fact, it is not.

The pendulum is now swinging in the direction of a stronger focus on work authorization and document verification.

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<sup>1</sup> Robert Pyne, *Federal Worksite Operation Leads to 33 Arrests Near the Villages*, VisaVerge (May 15, 2025) <https://www.visaverge.com/immigration/federal-worksite-operation-leads-to-33-arrests-near-the-villages/>.

<sup>2</sup> Alejandro N. Mayorkas, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, Dept. of Homeland Security (Oct. 12 2021), [https://www.dhs.gov/sites/default/files/publications/memo\\_from\\_secretary\\_mayorkas\\_on\\_worksite\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf).

<sup>3</sup> 8 C.F.R. § 274a.2(a)(1).

<sup>4</sup> 8 U.S.C. § 1324b(a)(6).

Recent policy announcements have laid the groundwork for a substantial government effort. On February 5, 2025, the Attorney General issued a memorandum emphasizing that state and local governments are prohibited from “resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests.” It further directs DOJ to investigate state and local officials who resist or obstruct the increased immigration-related federal actions for criminal “prosecution.”<sup>5</sup> Later, on March 6, 2025, the Deputy Attorney General released his own memo directing additional resources to cases involving illegal reentry into the United States. He prioritized hiring federal prosecutors in border districts across the country, further indicating that the DOJ plans to prioritize immigration enforcement.<sup>6</sup> Most importantly, on May 12, 2025, the DOJ updated the Criminal Division’s corporate whistleblower awards pilot program to include violations of federal immigration laws by corporations as a subject area.<sup>7</sup> As a result, whistleblowers are now eligible to receive significant rewards if their tips lead to forfeiture.

Accordingly, employers should prepare for workplace audits, I-9 inspections, and surprise enforcement actions. During President Trump’s first term, ICE set a goal to conduct as many as 15,000 I-9 audits annually, which was four times the historical norm. It is reasonable to expect that ICE will set a similar target for future years.

Importantly, new policy changes will also impact workers who companies might have previously deemed authorized. For example, the Department of Homeland Security (DHS) recently indicated its intent to eliminate certain immigration programs used as a basis for work authorization, including Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA). A stronger focus on anti-discrimination practices as opposed to work authorization documentation may have prevented some companies from taking steps to track which programs served as the basis for a worker’s eligibility. Accordingly, employers that may have been adhering to the immigration laws are at risk of increased government scrutiny due to the changing status of their workforce.

For publicly traded companies, there is the additional potential threat of an investigation by the U.S. Securities and Exchange Commission (SEC) into whether the company’s financial statements properly reflect the costs and/or liabilities associated with hiring undocumented workers as well as related disclosures pertaining to the risk of government action resulting from such hiring. Such investigations focus not just on disclosures in SEC filings, but also on the company’s public statements to investors, including on earnings calls and at investor conferences.<sup>8</sup>

## Serious Consequences

Worksite raids are costly and produce a number of arrests that may generate significant media attention. In the aftermath of a raid, there are serious legal implications for both the affected workers and the employers alike. Workers face the threat of arrest and deportation. In the meantime, employers are left with the difficult task of determining the adequacy of the compliance policies that existed, in addition to sorting out the difference between who was authorized to work, and who was not. Additionally, knowingly hiring or harboring undocumented workers can lead to substantial fines, debarment, or jail time. Civil and criminal liability may impute to anyone – including managers, executive leadership, or even active investors – with actual or constructive knowledge of efforts to violate immigration laws. We have successfully guided clients subject to worksite enforcement raids through this complex environment to reach highly favorable resolutions with the government, including a recent Non-Prosecution

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<sup>5</sup> Pam Bondi, Sanctuary Jurisdiction Directives, U.S. Department of Justice, Office of the Attorney General (Feb. 5, 2025).

<sup>6</sup> Todd Blanche, U.S. Attorneys’ Office Staffing Priorities, U.S. Department of Justice, Office of the Deputy Attorney General (March 6, 2025).

<sup>7</sup> Matthew R. Galeotti, Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime, U.S. Dept. of Justice, Crim. Div. (May 12, 2025).

<sup>8</sup> In 2012, one public company disclosed that the company, which was already under investigation by the criminal authorities for compliance with employee work authorization laws, had received a subpoena from the SEC seeking information “regarding our compliance with employee work authorization requirements, our related public statements and other disclosures.” See

<https://www.sec.gov/Archives/edgar/data/1058090/000119312512240091/d356129d8k.htm>.

Agreement (NPA) for a meat processing company in Ohio.<sup>9</sup> Despite enduring a surprise worksite raid that saw an army of ICE agents seize voluminous company records and arrest 146 individuals in a single day, our team managed to negotiate an NPA with a small penalty for a single violation by a hiring manager operating outside the scope of his employment.

### Takeaways

- Companies should focus on preventive measures including I-9 compliance, e-verify, and audit programs – areas where Weil has substantial experience helping to assess the adequacy of employment controls. Nevertheless, companies that employ newly arrived immigrants may face significantly heightened scrutiny as the pendulum swings back toward strict immigration enforcement. Accordingly, companies should be ready to justify their hiring processes and employment decisions and to defend themselves from accusations of misconduct.
- Companies still need to calibrate between verifying work authorization documents and antidiscrimination laws. While it is not clear the extent to which the current administration will enforce antidiscrimination laws, companies should continue to take steps to comply with those laws, as well.

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<sup>9</sup> Press release, U.S. Attorney's Office Northern District of Ohio, Ohio Meat Processing Company "Fresh Mark, Inc." Enters into Non-prosecution Agreement for Scheme to Use Stolen Identities of U. S. Citizens for Workers (Dec. 31, 2024)), <https://www.justice.gov/usao-ndoh/pr/ohio-meat-processing-company-fresh-mark-inc-enters-non-prosecution-agreement-scheme>.