



Employer Rights and Responsibilities Regarding Federal Immigration Enforcement in the Workplace

NOTE: This guidance is for informational purposes only and is not legal advice, nor is it a substitute for the full requirements set out in federal statutes and regulations regarding Form I-9. Individuals, employers, and other entities are encouraged to discuss all legal issues with their legal counsel.

Washington State law recognizes that immigrant workers contribute to Washington state's strong economy. Certain federal civil immigration enforcement actions may cause disruption to workplaces and communities and reduce community safety. Employers have rights and responsibilities related to interactions with federal officials conducting immigration enforcement activities. This guidance is for employers in Washington State, issued by the Washington State Attorney General's Office, in accordance with RCW 49.97. This guidance focuses on federal agency immigration enforcement actions and Form I-9 inspections.

Employer Rights and Responsibilities during an I-9 inspection

Washington State law, [RCW 49.47](#) (Immigrant Worker Protection Act), requires employers to provide notice to workers and workers' union or collective bargaining representatives when federal agencies seek to inspect or take enforcement action related to worker Form I-9s and other related worker records.

What is a Form I-9 inspection?

Form I-9 is the federal form that employers and newly hired workers use to verify identity and authorization to work in the United States. The Form I -9 [instructions](#) contain a list of acceptable documents that workers can present to verify their work authorization and identity. Employers may not require workers to present specific documents to complete Form I-9. Employers must keep Form I-9s for every current worker. Once a worker is no longer working for the employer, the worker's Form I-9 must be kept for a period of three years after hiring a worker, or for one year after the worker's last day of work, whichever is later. Employers should have a consistent policy about whether they choose to retain copies of a worker's identity or work-authorization documents. E-Verify employers should follow E-Verify retention guidance.

The federal government can conduct an inspection of Form I-9 documents at a workplace to verify the identity and employment eligibility of workers. To initiate a Form

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I-9 inspection (sometimes referred to as an “I-9 audit”), federal immigration agents will issue a Notice of Inspection that requests employers provide each worker’s Form I-9. The federal law can be found [here](#). The notice may be accompanied by a subpoena (a legal document demanding that an individual or employer turn over certain records) requesting other supporting records, such as payroll documents.

Once an employer receives a notice of inspection from federal immigration agents, the employer will generally have three business days to produce the requested Form I-9s and any additional documents.

The Immigrant Worker Protection Act (IWPA, [RCW 49.47](#)) is a Washington law that creates requirements for employers in Washington to notify their workers after they receive a Notice of Inspection of Form I-9 documents from immigration agents.

After an employer receives a Notice of Inspection from a federal immigration agent, what must an employer do to comply with the Immigrant Worker Protection Act?

If immigration agents come to an employer to request inspection of Form I-9s, the employer must comply with the Immigrant Worker Protection Act and notify all workers of the inspection within **five (5) business days** of the federal immigration agents issuing the Notice of Inspection. For more information on how to comply with the IWPA, please go to: atg.wa.gov/IWPA

****Please note, federal law requires an employer to produce workers’ Form I-9 documents and supplemental documentation within three (3) business days, while the deadline to notify workers of the inspection is five (5) business days under state law. Business days are any calendar day excluding Saturday, Sunday, and state legal holidays.****

Under Washington law, RCW 49.97, employers must both notify their workers individually of an inspection and post a notice to workers in an area visible to all workers **within five (5) business days of receiving notice** from federal immigration agents of a Form I-9 inspection. Individual notice to workers must be either by hand delivery to the worker, mail, email, or text message, with proof of transmission or delivery.

In workplaces where any workers are represented by a labor union or collective bargaining representative, the employers must also transmit the required notices to those authorized worker representatives.

This notice to workers must include:

- A) The name of the federal agency that will be conducting the inspection;
- (B) the date that the employer received notice of the inspection; and
- (C) the types of records sought and any other identified purposes of the inspection.

Employers must display the poster issued by the Attorney General’s Office informing workers of their rights under Washington law in an area visible to all workers.

The Washington State Office of the Attorney General published the poster to assist employers in complying with Washington law at atg.wa.gov/IWPA.

When displaying the poster and the notice, it is important to consider where the workers report for work. If workers report to a central office, posting in the office is fine. If they report to a job site, post them there. You may choose to do both since the posters are free.

The Washington State Office of the Attorney General also publishes a model notice of Form I-9 inspection to assist employers in complying with Washington law.

You can find the poster and model notice here: www.atg.wa.gov/IWPA

Both the poster and model notice are available in English and the five most spoken non-English languages in the state, which are Spanish, Russian, Vietnamese, Ukrainian, and Chinese-Mandarin.

Does the employer have to notify a worker if the Form I-9 inspection results identify an error in the worker's Form I-9?

Yes, if any worker is identified in the I-9 inspection results as lacking work authorization or that their Form I-9 has deficiencies, the employer is required to individually notify that worker and their union or collective bargaining representative, if any, **within five (5) business days of receiving the federal agency's inspection results**. Notice must be made by either hand delivery to the worker, mail, email, or text message, with proof of transmission or delivery.

If the inspection results provide the opportunity to correct deficiencies, the employer must offer that worker and their union or collective bargaining representative, if any, options for dates and times to meet to discuss prior to the federal agency's deadline for corrections.

The Washington State Attorney General's Office (AGO) publishes a model notice, "Notice to affected workers," to assist employer compliance with Washington law.

You can find the model notice here: www.atg.wa.gov/IWPA

The model notice is available in English and the five most spoken non-English languages in the state, which are Spanish, Russian, Vietnamese, Ukrainian, and Chinese-Mandarin. Affected workers must be provided notice in the language most regularly used to communicate between the employer and the affected worker.

What can an employer do if federal immigration agents arrive and ask to conduct an I-9 inspection without prior notice?

If federal officials, including ICE, want to see an employer's I-9 records, federal law requires them to provide the employer at least three business days' notice. Although federal officials may ask the employer to waive the three-day notice, the employer can deny the request. An employer should contact their attorney for advice if this happens.

Employers should also follow the requirements for worker notification in the Immigrant Worker Protection Act.

Are employers required to conduct Form I-9 self-audits?

No. Employers are not required to perform Form I-9 self-audits. Employers may do a Form I-9 self-audit to ensure their records are in order in case they are inspected by federal immigration agents. Employers should consult with their legal counsel before doing self-audits. Form I-9 self-audits must not be done for unlawful purposes, for example, to threaten workers with immigration consequences if they have exercised their workplace rights. Any Form I-9 self-audit must comply with all applicable federal, state, and local anti-discrimination and anti-retaliation laws. Any Form I-9 self-audit must also comply with applicable collective bargaining agreements. If the employer is conducting a Form I-9 self-audit on an irregular, random basis; audits only certain workers; or singles out workers of particular nationalities for an audit, the employer may be conducting a self-audit for purposes that are unlawful.

Employer Rights and Responsibilities Outside of an I-9 Inspection

What is the difference between a Form I-9 Inspection and a “workplace raid”?

A Form I-9 Inspection is when immigration agents seek to review the employer's work authorization records. When immigration agents physically come to a workplace to question workers and detain those they believe are in the United States without proper documentation, this can commonly be referred to as a “workplace raid”.

Does an employer have to allow federal immigration agents to enter their workplace?

Whether an employer must allow federal immigration agents to enter their workplace depends on certain circumstances. Federal immigration agents may enter areas that are open to the public. They generally may enter non-public areas only with valid consent from a person authorized to give it, a signed valid judicial warrant authorizing entry, or another recognized legal exception, such as an emergency or specific contractual obligations. **Employers are encouraged to discuss all legal issues and questions with their attorneys.** General guidance about the rights of individuals and entities in Washington on this topic is available at: [Know Your Rights: Civil Immigration Enforcement in Washington | Washington State](#)

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What is a “private” or “non-public” area in a workplace?

A non-public area is an area not generally open or accessible to the public where the owner, tenant, employer, or lawful occupant controls entry. Whether an area is non-public depends on the actual access rules and physical or operational controls. Examples of non-public areas may include: employee-only offices, kitchens, break rooms, stockrooms, warehouses, or production areas; areas behind locked doors, badge-access points, counters, gates, or “Employees Only” signs; and private offices or conference rooms not ordinarily accessible to visitors. Examples of public areas may include: a retail sales floor during business hours; and a restaurant dining area open to customers.

What can an employer do to prepare for immigration enforcement activities or workplace raids?

Employers should consult with their attorneys regarding their legal options before a raid or other immigration enforcement happens.

Employers can work with workers to develop a response plan in the event of federal immigration agents coming to the workplace. Examples of actions to include in a plan may be:

- Identification:
 - Designate a manager or other worker to be contacted if federal immigration agents show up at the workplace.
- Communication:
 - Confirm that worker emergency contact information is current or establish a “phone tree” for communicating quickly with workers’ families.
 - Share Know Your Rights information. For example, workers generally may remain silent and decline to answer voluntary questions. Workers should not sign documents they do not understand and may ask to speak with an attorney. An employer may remind workers of this right but should not prevent workers from answering federal immigration agents.
 - Encourage workers to remain calm and not run, hide, interfere with agents, or obstruct enforcement activities. Workers running at the sight of federal immigration agents could lead to arrest regardless of immigration status or a warrant.
- Practice:
 - Practice the plan so that everyone knows their role and problems can be identified and resolved.

What can an employer do when federal officials try to enter a worksite or conduct a workplace raid?

Employers can collect information, including names of the agents. They can also request the agents' business cards. Employers or their designee can request to see the judicial warrant or subpoena if the agents are requesting specific information or access to non-public, private spaces to understand if the agents attempt to exceed the scope of the warrant. Employers can request additional time to provide legal documents. If the agents attempt to access areas beyond the scope of what is specified in the judicial warrant, employers can deny the agents access to those areas.

Some sample statements employers could prepare include statements like these:

- "I am the employer. You cannot go to other areas of the workplace without my permission."
- "This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?"

The information employers are required to provide and any access to non-public, private areas will depend on the warrant provided by federal immigration agents. Employers should contact their attorneys to confirm the validity of the warrant. Employer representatives may generally decline to answer voluntary questions and choose to remain silent, but they should not make false statements or obstruct agents and must comply with valid legal processes.

After a "workplace raid", employers should notify workers' and their union or collective bargaining representative, if any.

What can an employer do if federal immigration agents arrest workers?

If immigration agents come to a workplace to conduct a raid, to execute a judicial warrant, or any other reason and any workers are detained or removed from the workplace, employers are still legally required to make sure **all workers are properly paid** for the work they did in a timely manner. Employers may ask agents where the worker may be taken to facilitate that process.

Workers may have the right to use paid sick leave time to prepare for, attend, or participate in immigration court proceedings under Washington state law. See [RCW 49.46.210](#) for more information.

Employers may follow established emergency-contact procedures, consistent with the worker's instructions and applicable privacy obligations.

What is the difference between an administrative warrant and a judicial warrant?

If federal immigration agents come to the workplace, the agents may present documents such as a judicial warrant or an administrative warrant. A judicial warrant or subpoena is issued by a court and signed by a judge or a clerk, while an administrative warrant is issued by a federal agency, such as the US Department of Homeland Security. Immigration agents and immigration court judges are administrative officers – they are

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not federal judges with the power to issue a judicial warrant. Federal immigration agents must have authorization from a judge in order to enter a private space without consent. If immigration agents claim that they have a court order, warrant, subpoena, or other document that allows them to enter without consent, you can ask to review it before permitting them access. An employer should review whether a judicial warrant is signed by a judge, current, identifies the correct location and date, and describes the authorized search. The employer is not required to consent to access beyond the warrant's scope and should contact legal counsel promptly. An immigration or “administrative” subpoena or warrant is not the same as a judicial subpoena or warrant (see [Immigration Enforcement Document Samples](#)).

Employers should contact their attorneys to confirm the validity of the warrant or subpoena.

What can the employer do when federal immigration agents request information about their workers?

If there is not a formal Form I-9 Notice of Inspection, court order, or judicial warrant or subpoena, employers do not need to share, provide, or disclose their worker’s personal information for immigration enforcement purposes. Even if they have an administrative warrant, that typically cannot require employers to produce or share information about their workers. If the immigration agent requests access to an employer’s electronic systems that hold worker information, the employer is not required to grant it unless the immigration agents have a judicial warrant or subpoena. Even then, an employer may have legal options that their attorney should be consulted to address.

ICE or other immigration agents may come to an employer looking for a specific person or asking for a specific worker’s records. If presented with a verbal request or administrative warrant, employers have these rights:

- Employers do not have to say if the worker is working that day or not.
- Employers do not have to take federal officials to the worker.
- Employers do not have to call workers to the public area.
- Employers do not have to unlock electronic systems, open files, or allow access to non-public spaces.

Other Related Workplace Protections

In addition to the IWPA, there are other existing state laws that protect immigrant workers in the workplace.

Washington Law Against Discrimination in the Workplace

Employers in Washington cannot discriminate against workers (including by refusing to hire someone, paying them less, cutting hours or otherwise unfavorably altering a worker's working conditions) on the basis of their race, color, creed (religion), national origin, citizenship or immigration status, sex, marital status, age (40+), sexual orientation, gender identity, gender expression, veteran or military status, the presence of a physical, mental, or sensory disability (including HIV/hepatitis C), or the use of a trained dog guide or service animal by a person with a disability. Additional information about Washington State anti-discrimination laws, [RCW 49.60](#), can be found at the Washington State Human Rights Commission. <https://www.hum.wa.gov/>

Immigration Retaliation Law in Washington

Employers in Washington are also prohibited from retaliating against workers or threatening them based on their or their family's perceived immigration status as part of coercion to violate certain other labor laws. [RCW 49.46.370](#). Employers cannot use immigration status as a way to stop workers from defending certain rights in the workplace or advocating for certain working conditions. In general, retaliating against a worker for exercising their rights by threatening to self-audit employment authorization paperwork or to call immigration enforcement is against Washington state law.

Paid Sick Leave for Immigration Proceedings

Some workers in the State of Washington have the right to use paid sick leave time to prepare for, attend, or participate in immigration court proceedings, as stated in [RCW 49.46.210](#). Employers and workers can access more information about Washington's Paid Sick Leave laws from the Department of Labor and Industries. <https://lni.wa.gov/workers-rights/leave/paid-sick-leave/index>.

Keep Washington Working Act

The Keep Washington Working Act (KWW) prevents certain public agencies and Washington state and local law enforcement from requesting information about immigration status when not required by other laws, sharing information with immigration agents when not required by other laws, or detaining someone for civil immigration enforcement unless certain exceptions apply. Public employers should familiarize themselves with KWW as provided in [RCW 43.10.315](#), [RCW 43.17.420-425](#), and [RCW 10.93.160](#). Additional information on Keep Washington Working can be found at the Washington State Attorney General's Office [website](#).

Further Questions

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If you have questions or concerns about what to do if an immigration agent comes to your workplace, it is recommended that you meet with an attorney to get your questions answered and seek legal advice. Lists of licensed attorneys practicing immigration law may be found through the Washington State Bar Association (WSBA) (<https://www.wsba.org/for-the-public/find-legal-help>), or the American Immigration Lawyers Association (AILA) (<https://ailalawyer.com/>). This document is to be considered general guidance, and the AGO is not authorized to provide legal advice to individuals.

Alternatively, you may choose to reach out to the resources below.

- Washington Immigrant Solidarity Network (WAISN) Deportation Defense Hotline: 1-844-724-3737. Hours: Monday to Friday, 6am to 6pm. Interpretation available in nearly 300 languages. Know Your Rights information, legal referrals and resources, accompaniment. <https://waisn.org/what-we-do/deportation-defense/hotline/>
- The Northwest Immigrant Rights Project (NWIRP) offers legal services and advocacy for immigrants in Washington state. They can be reached by email at: info@nwirp.org. For more help from NWIRP, please go to: <https://www.nwirp.org/get-help/>
- More organizations and resources can be found at: atg.wa.gov/iwpa

