

ICE Now Taking More Opportunistic Approach to Employer Sanctions

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Could you imagine losing your workers overnight for immigration reasons due to an unrelated investigation? Recent headlines about an April 5 immigration raid of a meat processing plant in Tennessee announced the biggest employment crackdown under the Trump administration. U.S. Immigration and Customs Enforcement (ICE) took 97 people into custody; 10 were arrested on federal immigration charges and one on state charges, while 86 were detained for being in the country illegally.

The National Immigration Law Center said this is believed to be the largest single workplace raid since 2008. Moreover, the Tennessee raid demonstrates that ICE is taking a more opportunistic approach to employer sanctions than has been seen in the past.

The facts underlying the raid show there is more inter-agency cooperation and a new emphasis on illegal immigration discovered during other types of investigations. In this case, the government reportedly went to the facility to execute a criminal search warrant from the Internal Revenue Service's Criminal Investigation Division; that led to an immigration investigation. What is notable here is that one enforcement agency made a referral to ICE, and ICE acted quickly with a show of force not seen in quite some time.

During the George W. Bush administration, immigration raids focused primarily on the illegal workers themselves; enforcement actions often involved detaining workers to ascertain their individual immigration status and then taking into custody those found not to be lawfully present. An example is the Potsdale, Iowa, raid of a meat packing plant where ICE agents arrived in helicopters and arrested nearly 400 workers in May 2008. After the Potsdale raid and under the Obama administration starting in 2009, enforcement actions most often focused solely on the employer's compliance with their duties under the law and largely ignored workers in enforcement actions. ICE performed "desktop audits" that resulted in a decrease of the number of workers arrested, though administrative fine

amounts rose by over 2,300 percent since 2006.

Under President Trump, however, workers are more prone to being arrested, and a new pattern is emerging: Any encounter with federal law enforcement could trigger an immigration investigation.

The Tennessee raid, coupled with the January 2018 raid of 98 convenience stores in the 7-Eleven chain (where 21 unauthorized workers were arrested), shows that the Trump administration has changed tactics when it comes to worksite enforcement.

All indications are that “desktop audits” will continue and that the strategy will remain mostly employer-focused, but the Trump administration will not ignore a company’s workers. If an opportunity arises where employees’ work authorization could come into question, ICE may quickly follow.

David J. Garrett’s law practice helps businesses and people get where they need to go. He focuses on immigration-related matters and civil litigation, representing both individuals and companies. David is a member of the firm’s employment and labor and construction practice groups, as well as leading the firm’s immigration practice.