

Immigration Worksite Enforcement: How to Prepare for ICE, USCIS, and WHD Investigations

February 5, 2025

Fredrikson

The logo for Fredrikson, featuring the name in a bold, black, sans-serif font. A red horizontal bar is positioned below the 'F' and extends to the right, ending under the 'n'.

Agenda

1. Recent Immigration Enforcement Developments/Trends
2. How to Prepare for Immigration Worksite Enforcement and Raids
3. What Happens in a Worksite Enforcement Investigation

Immigration Enforcement Developments

January 20, 2025, Executive Orders – Immigration Enforcement

“Protecting the American People Against Invasion”

“Declaring National Emergency at the Southern Border of the United States”

“Clarifying the Military’s Role in Protecting the Territorial Integrity of the United States”

Expansion of Expedited Removal to US Interior

Individuals without legal immigration status in the US who have been in the US less than two years can be subject to expedited removal

Documentation of immigration status in the US

- Copy of US passport/passport card/US birth certificate
- Copy of I-551 lawful permanent residence card or temporary I-551 card
- I-94 record to establish nonimmigrant status in the US
- Other documentation: I-797 receipt notices, EAD, or refugee stamp in passport

Rescission of 2011 DHS Sensitive Locations Memo

- 2011 DHS Sensitive Locations Memo directed ICE/CBP to refrain to “fullest extent possible” from enforcement action in/near “Protected Areas.”
 - Protected Areas included:
 - Medical & mental health care facilities (hospitals, health clinics, vaccination/testing sites, urgent care centers, sites serving pregnant individuals and CHCs)
 - Social service providers
 - Schools
 - Churches and places of worship
 - Courthouses
- DHS enforcement in Protected Areas only with prior permission or exigent circumstances where:
 - National security threat
 - Imminent risk of death/violence/physical harm
 - Hot pursuit of individual who poses public safety threat OR who was personally witnessed crossing border
 - Imminent risk of spoliation of evidence in criminal case
 - Safe alternative location does not exist

Policy Number: 10029.2
FEA Number: 306-112-002b

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

OCT 24 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR:

Field Office Directors
Special Agents in Charge
Chief Counsel

FROM:

John Morton
Director

A handwritten signature in black ink, appearing to read "John Morton", written over the printed name and title.

SUBJECT:

Enforcement Actions at or Focused on Sensitive Locations

Purpose

Rescission of DHS Sensitive Locations Memo

- January 20, 2025 (Inauguration Day), President Trump rescinded 2011 Sensitive Locations Memo that enshrined longstanding policy.
 - *“Criminals will no longer be able to hide in America’s schools and churches to avoid arrest.” Acting DHS Secretary Benjamin Huffman*
- In place of DHS Sensitive Locations Memo, DHS agents are instructed to use “common sense.”
- What was not rescinded/changed?
 - 4th Amendment
 - HIPAA
 - FERPA
 - Other state/federal privacy laws
 - Federal and state anti-discrimination laws
 - I-9 compliance requirements
 - Your organization’s mission
 - Your workplace culture
 - Your clients/patients

Rescission of DHS Sensitive Locations Memo

- The Bad News

- The increased focus on deportations and worksite enforcement means any workplace is much more likely to be the site of a government audit, raid, investigation, or interaction.

- The Good News

- Many of the same policies your organization has/should have for responding to other audits and law enforcement interaction will apply to these new types of government enforcement activities.

Back to the Future: Worksite Enforcement Under the Current Administration

DHS Worksite Enforcement Trends

First Trump Administration

- Worksite Raids- From 2017-2019: 1800 arrests from worksite raids
- I-9 Audits (FY2019 – 6,450) = **10x** as many I-9 Audits as Biden (FY2025 - <700)
 - FY2020 Goal was between 12,000 – 15,000 audits (but COVID-19 intervened)

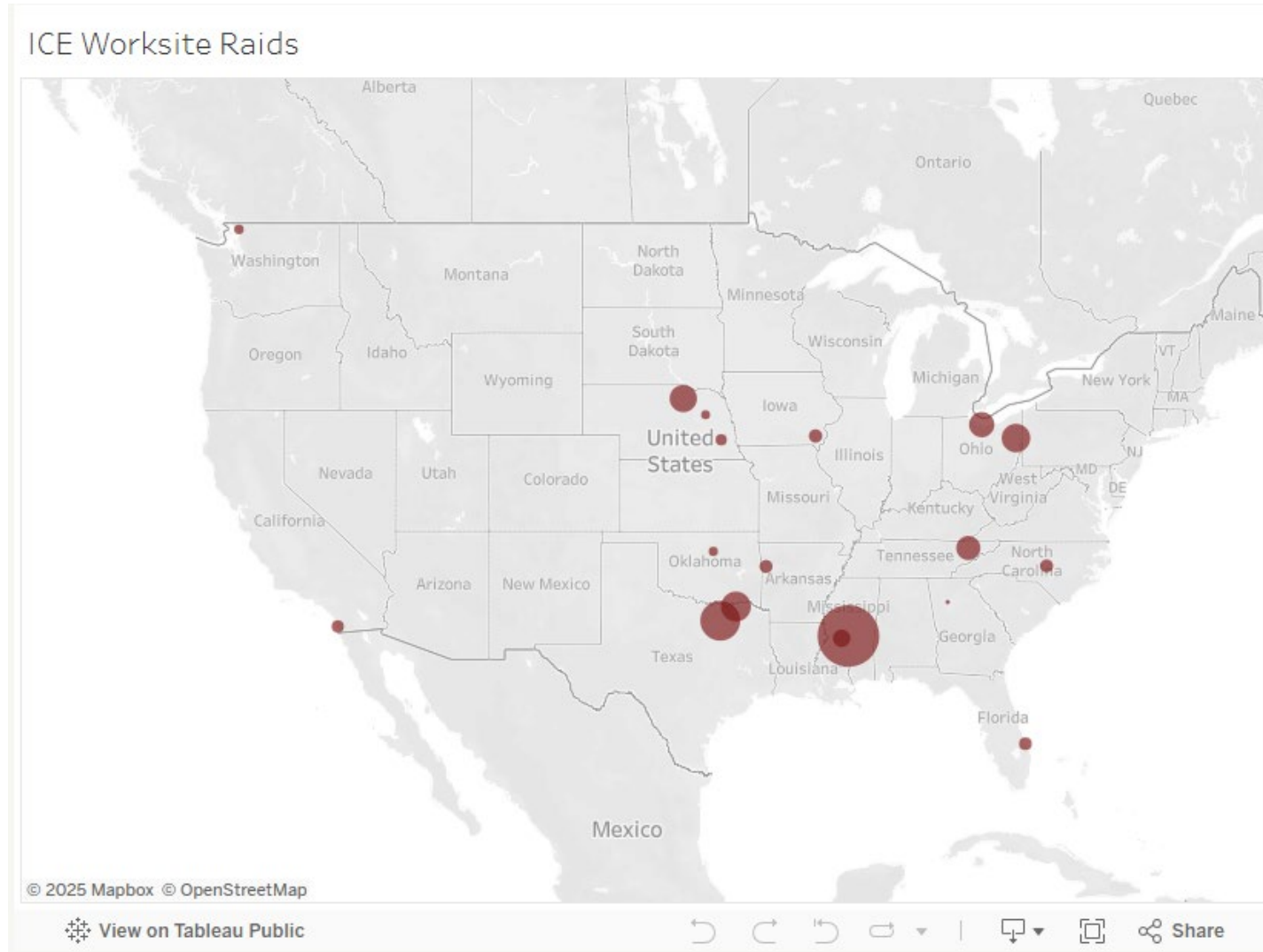
Expect an increase in I-9 audits and worksite raids and investigations

DHS/HSI Enforcement: Historical Statistics

Areas of Investigations	2017	2018
Worksite	1691	6848
I-9 Audits	1360	5981
Administrative work-related arrests	172	1525
Criminal work-related arrests	139	779

All of the above categories surged by 300 to 750 percent over one year.
<https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>

Enforcement Map of Trump 1.0



<https://www.nilc.org/resources/mapping-worksite-raids-under-the-trump-administration/>

Preparing for Workplace Investigations: ICE, USCIS, DOL & Other Government Entities

Preparing for Worksite Enforcement: Establish Worksite Enforcement Action Plan

- **Centralize:** Designate Company Representative(s)/Liaison(s) who will be point of contact with government & contact legal counsel
- **Communicate:**
 - Provide legal counsel's contact information
 - Establish internal communication plan
- **Train:** Conduct trainings and drills with front-line employees and managers (i.e., receptionists, administrative assistants, etc.) on policy

Preparing for Worksite Enforcement: Designate & Document Public/Private Areas

- Develop and communicate policy to staff regarding public and private areas
 - Lobby, Parking lot & sidewalk – public
 - Patient waiting rooms – private
 - Bathrooms/Staff Lounges – private
 - File room – private
- Post signs clearly marking spaces & enforce uniformly
- Install barriers between public & private (if none exist)
- Keep private information out of public view

Preparing for Worksite Enforcement: Review Data Collection Practices

- Avoid collecting immigration status or immigration-related information for clients/patients
 - DO NOT include on any documents that could be made public

Preparing for Worksite Enforcement Actions: Know Your Rights as an Employer

- Post signage with hours of operation & registration requirement
- You have the right to inform agent/officer you cannot speak and act on behalf of the company and you are required to contact the designated company representative/liaison for worksite enforcement and legal counsel
- You should confirm to the agent/officer that the employer has legal counsel and provide legal counsel's information
- You may escort agent/officer to a different office space/conference room
- You do not have to allow them to enter areas designated as non-public areas (private) without a judicial warrant
- You have the right to ask the agent/officer to present a judicial warrant if they want to enter non-public areas and to access company information
- You have the right to decline speaking with investigator without legal counsel

Preparing for Worksite Enforcement: Know Your Rights as an Employer, Continued

- Employees have the right to have counsel before speaking to an agent/officer
- You have the right to inform employees they have the right to choose to speak or not speak with investigators
- You should not tell employees not to speak to investigators; it is their choice to make
- You should not tell employees to hide or leave the premises or destroy evidence

Preparing for Worksite Enforcement: Know Your Rights as an Employer, Continued

- You have the right to ask and should document the following:
 - Agent name/number/badge
 - Questions & Answers
 - Officer conduct
- You should not destroy or attempt to hide documents/evidence

What Happens During a Worksite Enforcement Action and Practical Guidance

Types of Workforce Enforcement Actions

DHS/Homeland Security Investigations - ICE

- Criminal Activities: Alien smuggling, human trafficking, money laundering, document fraud, worker exploitation and/or substandard wage and working conditions
- Administrative enforcement against undocumented immigrants/employees (including warrants and subpoenas)
- I-9 Audits
- Removal Orders

DHS/USCIS

- Fraud Detection National Security Investigations: H-1B, H-2, L-1, R-1, F-1 STEM OPT
- Warrants and subpoenas

Types of Workforce Enforcement Actions

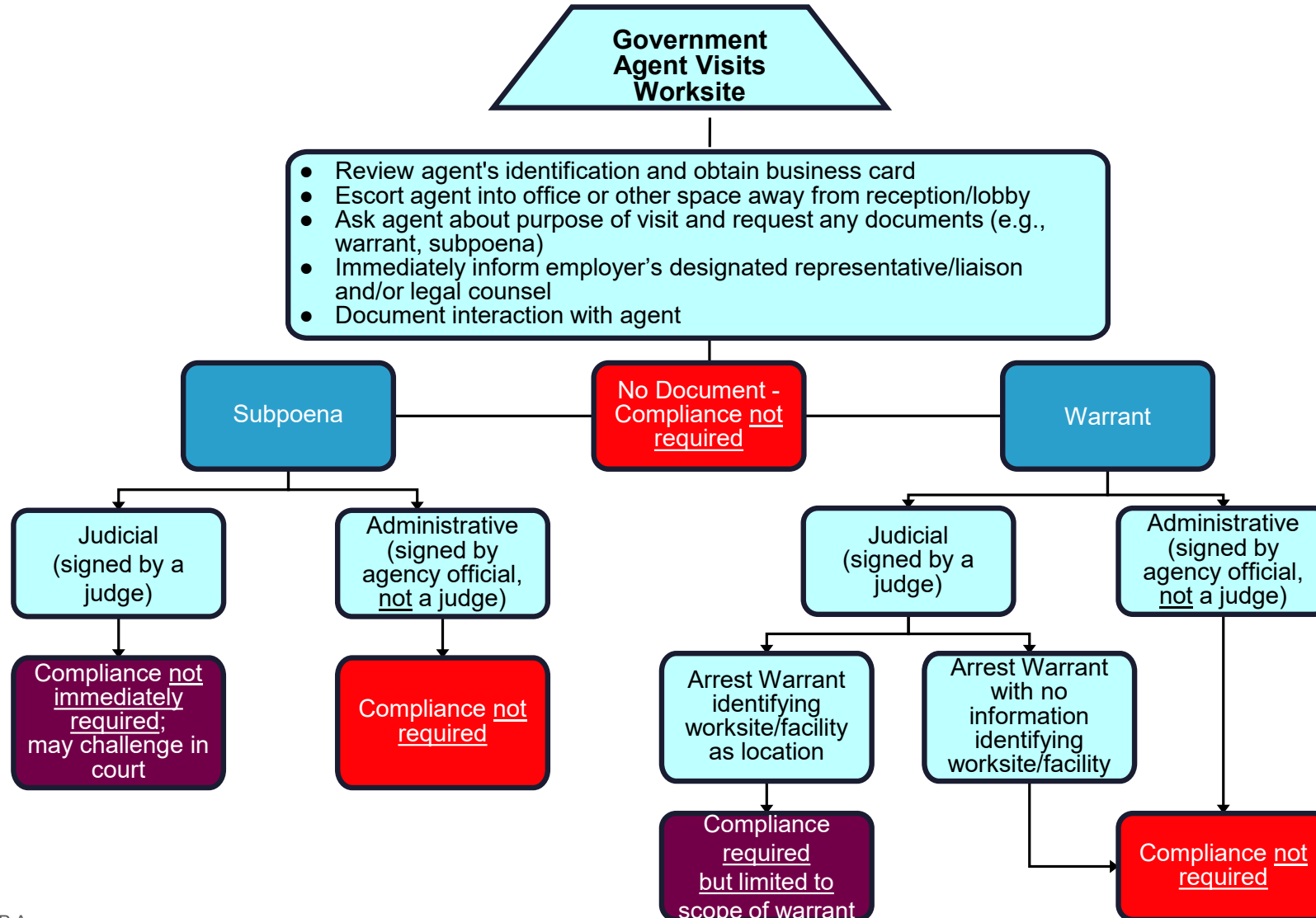
DOL – Wage and Hour Division

- LCA violations
- Labor certification audits
- Wage/hour investigations

DOJ

- Anti-discrimination audits/investigations

Law Enforcement Actions & Process



Judicial Warrant

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No.)
)
)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

SAMPLE

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
 for _____ days (not to exceed 30) until, the facts justifying, the later specific date of _____

Date and time issued: _____
Judge's signature

City and state: _____
Printed name and title

Immigration-related/Administrative Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Summary of Various Enforcement Documents

Document Type	Description	Use	Effect on organization
Administrative Warrant	Document signed by ICE official <u>not judge</u>	Arrests or to confiscate records	Compliance not required
Judicial Warrant	Document signed by <u>judge</u>	Arrests or to confiscate records	Compliance required <i>if organization identified on warrant</i>
Deportation Order	Document stating person subject to removal order (deportation)	Deporting person from U.S.	Compliance not required
Administrative Subpoena	Document signed by ICE <u>not judge</u>	Require person's appearance in court or production of documents by certain date	Compliance not required
Judicial Subpoena	Document signed by <u>judge</u>	Require person's appearance in court or production of documents by certain date	Compliance not immediately required; <i>employer may challenge in court</i>

ICE Contacts Employers for Employee Information



Ask ICE for signed subpoena/warrant for requested information



Be aware of privacy laws & industry specific privacy laws (FERPA, HIPAA, state data privacy laws)



Contact legal counsel before releasing any information



Not required to provide information without a subpoena/judicial warrant



No subpoena or warrant required to confirm or deny employment of individual



Inform employee of request from ICE unless you are ordered otherwise by ICE

ICE Appears at Worksite to Execute an Administrative Removal Order



Request ICE provide a copy of the subpoena/warrant



Ask ICE to wait for you in a private conference room and be transparent as to how you will contact employee



Contact employee to inform him/her of ICE's warrant and presence at worksite



Provide opportunity to contact legal counsel



Inform employee's family or emergency contact if ICE arrests employee

Special Considerations for Sensitive Locations- Schools and Universities

- Identify all federal, state, and local laws/policy protecting students.
- Ensure staff are trained on these laws/policies.
- Reevaluate data collection practices
 - Specifically avoid collecting immigration status information
- Share “Know Your Rights” information with students, family, community

Special Considerations for Sensitive Locations- Hospital/Clinic Recommendations

- Protect and minimize disclosure of patient information
 - Health care providers have no general affirmative duty to inquire/document/report patient immigration status
- Reevaluate data collection and maintenance
- Scrutinize scope of warrants
 - Limit fallout and avoid fishing expedition
- Educate patients (KYR cards/posters)
- Consider telehealth service options

Special Considerations for Sensitive Locations: Social Services Organization

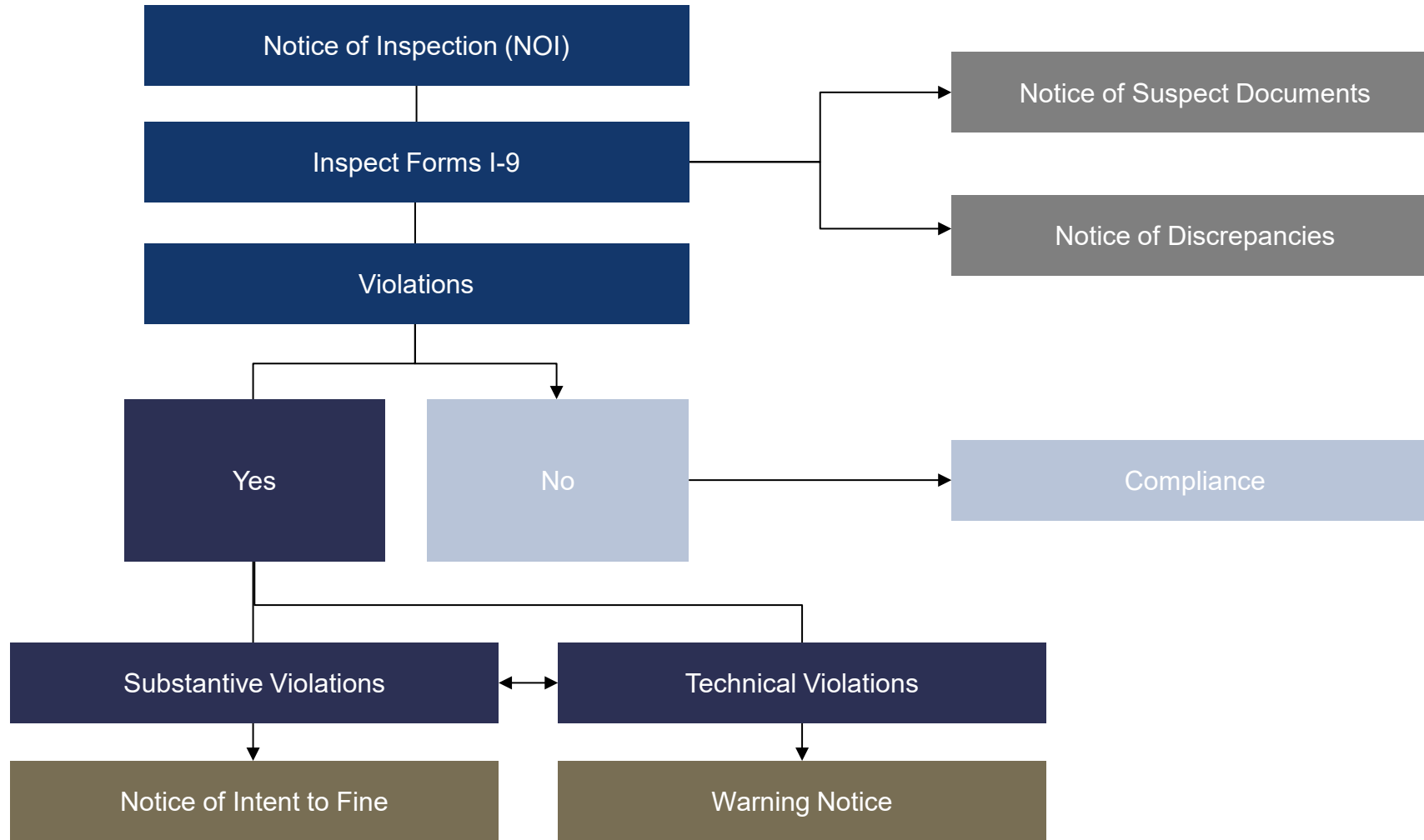
- Identify all privacy and confidentiality laws (HIPAA, FERPA, attorney-client privilege)
- Minimize public areas and clearly mark private areas
- Train staff on harboring laws
- Obtain legal counsel
- Ensure 501(c)(3) compliance

Special Considerations for Sensitive Locations: Places of Worship

Identify and mark
private spaces

Seek legal counsel
on laws regarding
sanctuary
congregations and
RFRA

I-9 Audits: Anatomy of an I-9 Audit



I-9 Audits – Preparing for an I-9 Audit



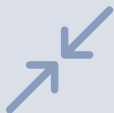
Designate a central I-9 Administrator



Establish a written I-9 Policy



Have legal counsel conduct internal I-9 audit



Prepare new I-9s for employees with missing/ no I-9s on file

I-9 Compliance – Practice Tips

Correct

- Correct all errors where possible
- Use a different color pen
- Strike out errors with a single line
- Correct, initial, note “per audit on _____”

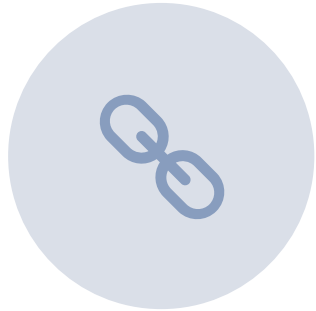
Correct Correctly

- Never backdate I-9 corrections.
- Never use white-out

Maintain copies of documents

- Consider maintaining copies of I-9 supporting documents to avoid substantive I-9 fines

Responding to an I-9 Notice of Inspection



Designate A Central Point
of Contact For Initial
Communication With
ICE/HSI



Contact Legal Counsel



Employers Have Three
Business Days to Present
the I-9s



Make Copies Of All
Communication/
Documentation Provided
To ICE

USCIS-FDNS Investigations



FDNS Officer may appear at worksite to confirm representations in a nonimmigrant petition (H-1Bs, H-2As, H-2Bs, L-1s)



Train employees to connect the FDNS officer to designated company representative for FDNS visits.



Employer must cooperate with FDNS and provide requested information in a timely matter related to the nonimmigrant petition

Department of Labor - WHD Investigations



Agents can make unannounced visits to worksites to conduct investigations



Purpose is to establish a record of employer compliance or non-compliance with program requirements



May interview non-management or non-supervisory employees without employer's consent

ICE Raids



ICE agents go to a worksite without warning to investigate an employer



Will have a judicial warrant to conduct raid



May question, detain, and/or arrest individuals at workplace even if not initially targeted



You have the right to remain silent and a right to legal counsel

Presenters



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