



## First Major Worksite Enforcement Action of 2018 Targets 100 7-Eleven Stores Nationwide in a Sign of What Business Can Expect under the Trump Administration

Montserrat C. Miller

On January 10 Department of Homeland Security agents raided 100 7-Eleven stores nationwide as part of an effort to ensure employees' legal work authorization in the United States. This week's raids stemmed from a 2013 investigation against multiple 7-Eleven franchisees and managers who allegedly employed undocumented workers in New York and Virginia.

As [reported](#)<sup>1</sup> in The Associated Press, Derek N. Benner, acting head of Immigration and Customs Enforcement (ICE) Homeland Security Investigations stated, "this is what we're gearing up for this year and what you're going to see more and more of is these large-scale compliance inspections, just for starters." Furthermore, according to Benner, these worksite enforcement investigations are not going to be "limited to large companies or any particular industry – big, medium, small" will be subject to investigation. In a [statement](#)<sup>2</sup> by ICE Deputy Director Thomas D. Homan on the 7-Eleven Operation Homan stated, "Businesses that hire illegal workers are a pull factor for illegal immigration and we are working hard to remove this magnet. ICE will continue its efforts to protect jobs for American workers by eliminating unfair competitive advantages for companies that exploit illegal immigration." ICE has made clear that they will seek to enforce immigration laws against employers using a worksite enforcement [strategy](#)<sup>3</sup> that includes (i) compliance through Form I-9 inspections, civil fines and referrals for debarment; (ii) enforcement, through the arrest of unauthorized workers; and (iii) community outreach.

### What to Expect if Your Company is the Subject of a Homeland Security Worksite Enforcement Investigation

Generally, worksite enforcement investigations fall into two buckets. The first being what happened this week where agents from ICE conduct a "raid" of a place of employment, interview employees, potentially arrest individuals for suspicion of being in the United States illegally and seize property. The second is a toned down version of a raid where ICE agents appear at a place of employment and serve a Notice of Inspection (NOI), sometimes in conjunction with an administrative subpoena. The NOI is what triggers the investigation of a company's employment eligibility verification forms (aka "the Form I-9"). A company has three business days to provide the federal government with its Forms I-9 and any supporting documentation requested in the NOI.

The Form I-9 is a two-page form issued by U.S. Citizenship and Immigration Services (USCIS) which is used to document a new hire's identity and work authorization in the United States. Under federal law, U.S. employers must complete and maintain a Form I-9 for each current employee hired post November 6, 1986, the date that the Immigration Reform and Control Act (IRCA) mandated such documentation. Compliance with the Form I-9 requirement is mandatory and penalties for non-compliance range from paperwork violations for errors or omissions on the Form I-9 (\$216 - \$2,156 per Form I-9) to violations for knowingly hiring or continuing to employ someone knowing they are not authorized to work in the United States (\$539 - \$4,313 per individual). In some cases non-compliance may lead to criminal charges being filed for pattern or practice violations involving the hiring or continuing employment of unauthorized workers.

1 <https://apnews.com/cb0ef682ea534ff0b5d31e7c054a079e>

2 <https://www.ice.gov/news/releases/statement-ice-deputy-director-thomas-d-homan-7-eleven-operation>

3 <https://www.ice.gov/news/releases/worksite-enforcement-targets-employment-law-violators>

## How Can Your Company Prepare for a Worksite Enforcement Investigation?

Keys to ensuring compliance with the Form I-9 requirements include internal audits, training, preparation and having a plan in place. Here are some recommendations:

1. Make sure your company's Forms I-9 are in order. Conduct an internal audit of your Forms I-9 using outside legal counsel to ensure (i) that you are in fact completing the forms for all new hires and re-verifying the work authorization of employees whose temporary employment authorization is expiring; and (ii) that the Form I-9 is being properly completed. Questions to ask – do you have a Form I-9 for all current employees, are you using the current version of the Form I-9 found on USCIS's website, are new hires only completing the English version of the Form I-9, are you properly completing section 2 of the Form I-9 which is the section of the form that requires that employers physically inspect the document(s) presented by the employee to confirm and attest under penalty of perjury that they appear genuine and relate to the individual.
2. Train your team on proper completion of the Form I-9. Limit the number of individuals completing the form to a primary and back-up, when possible. The Form I-9 must be completed by employers within three business days of hire.
3. Have written policies and procedures outlining Form I-9 completion, maintenance and disposal of the forms. If your company participates in E-Verify either voluntarily or because you are legally required to do so, your policies and procedures should cover this topic. E-Verify is the electronic employment eligibility verification program administered by USCIS which complements the Form I-9. Other topics your policies and procedures should cover include handling the Form I-9 for remote hires and proper disposal of the Form I-9 for terminated employees.
4. Have a plan in place to respond to a visit by ICE agents regardless of whether it is a raid or a "friendly visit" that results only in the issuance of a NOI. This means clearly marking non-public areas of your workplace and, short of a valid warrant to search and seize, ensuring that agents are escorted to a conference room or other similar public space while a manager or supervisor is called to accept service of the NOI. California employers pay special attention to Assembly Bill 450 which went into effect January 1, 2018. The new law, among other requirements, prohibits employers from providing voluntary consent to immigration enforcement agents to enter "any nonpublic areas of a place of employment" without a judicial warrant. It also prohibits employers from providing voluntary consent to immigration enforcement agents to accessing, reviewing or obtaining employee records without a subpoena, judicial warrant or with respect to the Forms I-9, a NOI. Non-compliance can result in civil penalties of \$2,000 - \$10,000.
5. If you are the subject of a government investigation do not try to go it alone as the fines can quickly add up. Call outside counsel knowledgeable in the area of immigration-related worksite enforcement. All too often I see employers turning over too much documentation related to the Forms I-9, thereby potentially increasing their exposure and ultimately liability; as well as too readily agreeing to the fines imposed in a Notice of Intent to Fine without challenging the basis or rationale for the fines, including the consideration of mitigating factors.

## Authors and Contributors

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**Montserrat C. Miller**

Partner, DC Office  
202.677.4038  
montserrat.miller@agg.com

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**Atlanta Office**

171 17th Street, NW  
Suite 2100  
Atlanta, GA 30363

**Washington, DC Office**

1775 Pennsylvania Avenue, NW  
Suite 1000  
Washington, DC 20006

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