

California Immigrant Worker Protection Act: New Obligations on Employers

The Immigrant Worker Protection Act, [California Assembly Bill 450 \(AB 450\)](#), went into effect in California on January 1, 2018. AB 450 prohibits both public and private California employers from voluntarily consenting to a federal immigration agent's request to access nonpublic worksites and employee records without a subpoena or a judicial warrant.

In a statement accompanying the introduction of AB 450, the author stated, "AB 450 offers employers clarity about what to do when ICE agents target their places of business with indiscriminate raids." The import of this bill is that California employers may have to adopt a potentially adversarial stance against federal immigration agents in some circumstances.

Contrary to the perspective of the author of the bill, AB 450 may not provide adequate guidance as to how an employer should comply and lawfully block or impede immigration enforcement agents seeking to enter nonpublic areas of a worksite or obtain employment records.

Prior to AB 450, federal immigration authorities could routinely inspect worksites for possible enforcement actions, with or without advance notice, and employers could voluntarily allow immigration enforcement agents to access employee records and nonpublic areas of the worksite.

Key Provisions of Immigrant Worker Protection Act

- Other than for the purpose of verifying the judicial warrant outside the presence of employees, employers are prohibited from voluntarily consenting to the entrance of immigration enforcement agents to **nonpublic worksite areas** without a warrant. There is no guidance in AB 450 as to how the employer should respond to immigration enforcement agents who engage in conduct that the employer must somehow prevent.
- Employers are prohibited from voluntarily allowing immigration enforcement agents to access, review or obtain employees' employment records without a subpoena or warrant. This prohibition, however, does not apply to I-9 forms and other documents for which a Notice of Inspection has been properly provided.
- Employers are required to provide workers with written notice of receiving a Notice of Inspection for I-9 employment verification forms or other employment records within 72 hours of receipt from an immigration authority. Written notice is to be provided by posting notices in the manner specified in [Labor Code 90.2](#). The Labor Commissioner is to develop a template notice before July 1, 2018. Employers are also required to provide "affected employees" (defined in Labor Code 90.2(b)(2)) with a copy of the Notice of Inspection upon reasonable request. Additionally, employers must provide "affected employees" (and their representatives) a written copy (delivered by hand at the workplace if possible, or by mail and email if hand delivery is not possible) of the results of an inspection by immigration authorities within 72 hours of receipt, along with a written notice of the obligations of the employer and the affected employee arising from the results of the inspection.

- Employers cannot reverify the employment eligibility of a current employee outside of what is required by federal law.

Penalties

Generally, violations of AB 450 could result in a \$2,000 to \$5,000 civil penalty imposed on the employer for a first violation and \$5,000 to \$10,000 for each subsequent violation. For reverification of employment eligibility, there is a penalty of up to \$10,000.

What Should Employers Do?

California employers should have specific policies and procedures in place as a result of AB 450 and train employees. Compliance efforts may include:

- **Developing guidelines and educating employees regarding AB 450.** Some employees will require training in how to interact with immigration enforcement agents in order to prevent them from obtaining access to the nonpublic worksite or employment records without a subpoena or warrant.
- **Training frontline staff** about how to respond appropriately to any immigration enforcement agents visiting unexpectedly and unannounced. Because immigration enforcement agents may appear without notice, it is recommended to always have at least one designated and trained employee available.
- Instructing the designated employees and direct supervisors of "affected employees" to **meet the immigration agents in public areas** (not private) of the worksite. If possible, designate a private area at the public place of the worksite, such as a conference room.
- **Ensure that no records will be shown or given** to immigration enforcement agents absent a valid warrant or subpoena, and have a plan for accessing legal counsel if necessary for conferring about validity of legal process documents, like subpoenas and warrants.
- **Segregating I-9 forms and files** related to foreign national employees seeking immigration benefits from other personnel records.
- **Obtaining the notice template to be developed by the California Labor Commissioner.** Prior to the publication of the official notice, employers should provide notice pursuant to the requirements of [Labor Code 90.2](#) as best they can.

If your company has questions about California AB 450, please contact experienced counsel to address your questions on this new and novel California law.

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