



# Legal Updates Webinar

*Preparing Your Business for New Immigration Enforcement*

## 2.5.25 LEGAL UPDATES WEBINAR

*Learn what you need to know as an employer and business about the new immigration executive orders and enforcement.*

- What records do you need to have for employees?
- If you have employees without proper documentation are you at risk?
- What do you need to know about protecting patients, clients or customers?
- What are your rights as a business owner when dealing with immigration enforcement?



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# Preparing Your Business for New Immigration Enforcement

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# Outline for the Day

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- Required Employment Records
- Risks Associated with Lack of Records
- Protecting Patients, Clients, and Customers/Knowing Your Rights
- Common Practical Dilemmas

# Required Employment Records

## Form I-9

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- Must complete Form I-9 each time you hire any employee to perform labor in exchange for wages or other compensation
- Do not have to complete for independent contractors
- Must keep I-9 and documentation entire time employee works for you
- Must also keep I-9 for three years after the date of hire or one year after employment ends, whichever is later
- May retain electronically or in paper
  - Can store paper off-site as long as can present within 3 business days for an inspection

# Required Employment Records: Form I-9

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- Employee completes Section 1 → Employee Information and Attestation
  - Cannot complete Section 1 before acceptance of job offer
  - Can use a preparer or translator
- Employer completes Section 2 → Employer Review and Verification
  - Must complete within three business days of first day of employment
  - Can designate, hire, or contract with someone to complete on your behalf (“authorized representative”)



# Required Employment Records: Form I-9

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- Generally must review documents in physical presence
- If participate in E-verify → may remotely examine documentation
  - Must conduct live video interaction with individual
- Must treat all workers at site consistently
  - Cannot be discriminatory based on citizenship, national origin, immigration status
- Must allow employee to choose which documents they will present from list of acceptable
- Must accept documentation that reasonably appears to be genuine on its face

# Required Employment Records: Form I-9

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- Reverify authorization no later than date authorization expires
  - Supplement B of I-9 → attach to original I-9
  - Never required for U.S. citizens
  - Not required when U.S. passports or Permanent Resident cards expire
- Reverifying re-hired employees
  - If rehire within 3 years of completing I-9 – complete Supplement B or new I-9
  - If rehire more than 3 years of completing I-9 – must complete new I-9
- What constitutes “rehiring”?





# Required Employment Records: Form I-9

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- Missing or incorrect information
  - Draws line through incorrect information / enter correct or missing information
  - Initial and date the correction
  - Employer attach written explanation for why missing or corrected
- Multiple errors → redo section on new I-9 and attach to old
  - Attach written explanation

# Required Employment Records: Form I-9 Audits

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- Allowed to conduct internal audit
- Cannot be discriminatory or retaliatory when deciding audit scope
- If deficiency → notify employee in private and provide copies of I-9 and related documents
- If used wrong form at date of hire + documentation presented was acceptable → can attach an explanation or staple outdated form to a blank new version
- If never completed or missing – complete current version of I-9 as soon as possible + attach explanation

# Required Employment Records: Form I-9 Audits

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- If I-9 does not show that employee provided sufficient documentation → review documents, staple completed section to prior I-9, and attach explanation
- If conclude during audit that documentation is not genuine → address with employee and allow to choose different document
  - Unclear copying not enough
  - May not be able to conclude that not genuine only based on photocopy

# Required Employment Records: Discrimination Issues

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- Cannot request more or different documents than required by I-9
- Cannot request particular document from I-9
- Cannot reject documents that reasonably appear genuine
- Cannot have different requirements because of someone's national origin, citizenship, or immigration
- Cannot request documents before hiring or having them complete I-9
- Cannot refuse to hire because authorization has future expiration date
- Cannot retaliate for opposing discrimination or asserting rights
- Asylees, refugees, lawful permanent residents are protected



# Required Employment Records: E-Verify

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- Must e-verify if have 25 employees or more
- Tentative Nonconfirmation
  - Inform the employee
  - Employee must tell you within 10 federal government working days whether will try and resolve the mismatch
  - Cannot terminate until mismatch becomes Final Nonconfirmation or employee says will not take action to correct mismatch
- If regularly e-verifying and miss someone → create new case to become compliant

# Required Employment Records: Employer Sanctions

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- Cannot knowingly hire or employ individuals not authorized to work in the United States
- Cannot continue to employ someone who, after hiring, you know is unauthorized or became unauthorized
- Good faith compliance is an affirmative defense
- Civil monetary penalties increase per offense
  - Also civil penalties for failure to comply with I-9 paperwork
- “Engaged in pattern or practice” = criminal



# Recordkeeping: Practical Takeaways

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- Consider an I-9 Audit
  - What if employee admits not authorized?
  - What if not authorized before, but authorized now?
- Will No Match Letters return?
- What if an employee . . .
  - Gives you a new Social Security Number
  - Gives you a new Name and Social Security Number



# Protecting Patients, Clients and Customers

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- Executive Order did away with sensitive places with heightened protection: health care, education, religious institutions
- In absence of these protections, rely on Fourth and Fifth Amendment Protections
- Expectations of Privacy



# Protecting Patients, Clients and Customers

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- 4<sup>th</sup> Amendment: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



# Protecting Patients, Clients and Customers

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- Public vs. private spaces
- Reasonable expectations of privacy in private spaces, not in public spaces
- Need a warrant to search areas with reasonable expectations of privacy
- Any space health care is being provided, there is a reasonable expectation of privacy



# Protecting Patients, Clients and Customers

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- Other areas with reasonable expectations of privacy:
  - Restrooms
  - Dressing rooms
  - Locker rooms
  - Areas people sleep (hotel rooms or dorms)
- Unclear:
  - Locked areas
  - Areas marked private
  - Areas public not generally allowed

# Protecting Patients, Clients and Customers

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- To enter a private area where there is a reasonable expectation of privacy, a search warrant should be presented
- Lobbies, open areas to the public, parking lots do not generally require a warrant
- If you are dealing with a gray area, you can request a warrant, you can stand between law enforcement and the area
- You risk charges if you are combative



# Protecting Patients, Clients and Customers

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- **Recommendation – Authorized Person:**
  - Have authorized persons who are prepared to read warrants and communicate with law enforcement
  - These individuals may also, at your discretion, be directed to document (or film) the encounter
  - These individuals may also request to accompany the law enforcement official when they execute the warrant
- **Recommendation – Other Staff:**
  - All other staff are advised to tell law enforcement they are not authorized to speak with them and are summoning someone who can
  - Cannot unreasonably delay as a result of getting authorized person



File No.		STATE OF NORTH CAROLINA		In The General Court Of Justice District/Superior Court Division	
SEARCH WARRANT		County			
IN THE MATTER OF		To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:  I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.  You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.  You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.  This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.			
Name Of Applicant					
Name Of Additional Affiant(s)					
RETURN OF SERVICE					
I certify that this Search Warrant was received and executed as follows:					
Date Received	Time Received				
Date Executed	Time Executed				
<input type="checkbox"/> I made a search of		Date Issued	Time Issued	Name (type or print)	Signature
		<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC <input type="checkbox"/> Magistrate <input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge			
		NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).			
<input type="checkbox"/> I seized the items listed on the attached inventory.		This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.			
<input type="checkbox"/> I did not seize any items.					
<input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.					
Name Of Officer Making Return (type or print)		Date	Time	Name Of Magistrate (type or print)	Signature Of Magistrate
Signature Of Officer Making Return					
		This Search Warrant was returned to the undersigned clerk on the date and time shown below.			
Department Or Agency Of Officer	Incident Number	Date	Time	Name Of Clerk (type or print)	Signature Of Clerk
		<input type="checkbox"/> Dep. CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> CSC			
AOC-CR-119, Rev. 6/19 © 2019 Administrative Office of the Courts		Original - File   Copy - For Search of a Person, to Person from Whom Items Taken Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; if No Such Person Present, Leave Copy Affixed Thereon (Over)			

## APPLICATION FOR SEARCH WARRANT

I, \_\_\_\_\_

(Insert name and address; or if law enforcement officer, name, rank and agency)

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and to find and seize the property and person described in this application. There is probable cause to believe that (Describe property to be seized; or if search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

constitutes evidence of a crime and the identity of a person participating in a crime. (Name crime) \_\_\_\_\_

and is located (Check appropriate box(es) and fill in specified information)

☐ in the following premises (Give address and, if useful, describe premises)

(and)

☐ on the following person(s) (Give name(s) and, if useful, describe person(s))

(and)

☐ in the following vehicle(s) (Describe vehicle(s))

(and)

☐ (Name and/or describe other places or items to be searched, if applicable)

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Name Of Applicant (type or print)

Signature

Signature Of Applicant

☐ Magistrate

☐ Dep. CSC

☐ Asst. CSC

☐ Clerk Of Superior Court

☐ Judge

☐ In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by \_\_\_\_\_

☐ In addition to the affidavit included above, this application is supported by sworn testimony, given by \_\_\_\_\_

This testimony has been (check appropriate box) ☐ reduced to writing

☐ recorded, and I have filed any such writing/recording with the clerk.

**NOTE:** If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.



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):*



**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*

# ICE 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**

This warrant is directed at federal immigration law enforcement, not local law enforcement. Federal regulations provide authority to immigration agents to execute immigration warrants.

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

arguing that the warrant is also issued by its, it does not have any neutral ground cause that the subject to

- ☐ 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.

None of these checkboxes indicate that there is probable cause of a crime for which a person could be arrested by local law enforcement officers.

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

No judge or neutral

# Protecting Patients, Clients and Customers

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- Know if any laws protect you unless Judge signs warrant (HIPAA)
- Make sure that the warrant is followed
- Be aware of plain sight doctrine
- Be aware of searches incident to arrest
- Risk in obstructing execution of a warrant

# Common Practical Dilemmas

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- Do I notify people in the building ICE is present?
  - Running is probable cause
  - Obstruction of justice concerns
- Do I notify employees, patients or customers that are not in the building not to come to the building?
- Can I let others know of their rights?
- Can I prevent entry to my building?



# Common Practical Dilemmas

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- Can I support ICE's work on my premises even if it impacts employees or customers?
  - What about patients?
- What can I do if ICE is present in public spaces?
- Should I instruct employees to take any specific actions if ICE arrives?



# Take Aways

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- Determine which laws apply to you
- Determine authorized employees
- Determine your company philosophy in response
- Train your authorized and non-authorized employees accordingly

# Questions?

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