

CONFIDENTIAL ATTORNEY WORK PRODUCT SUBJECT TO  
ATTORNEY CLIENT PRIVILEGE



**ROSASCO**  
LAW GROUP

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**MEMORANDUM**

FROM: Rosasco Law Group, APC

DATE: March 31, 2023

RE: **WHAT TO DO WHEN A GOVERNMENT AGENCY SHOWS UP**

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**LEGAL DISCLAIMER:** This information is only current as of the date listed above. While this document is a useful tool in an Employer's toolbox, it cannot substitute for legal advice for your particular circumstances or the specific agency you are dealing with. In addition, this is general administrative agency information for multiple agencies, including but not limited to, Cal/OSHA, U.S. Immigration and Customs Enforcement ("ICE"), CA Employment Development Department, CA Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement; "DLSE"), and the Labor Enforcement Task Force ("LETf").

- Confirm the identity of each government agent present.
  - Ask for business cards.
  - Call agency to confirm identity for each person.
  - Write down each of their names.
    - Get their full name, title, address, phone number and agency name.
- Call Rosasco Law Group, and your designated Company official/representative.
- Limit agent's access to public areas only until a Company official (determine who this will be in advance, add backup contacts in case that person is unavailable) determines what access must be granted.
- Employer is not required to demand subpoena or judicial warrant before granting government access to review or obtain employee records.
  - You have the right to demand a subpoena or judicial warrant, but voluntary cooperation is best as requesting a subpoena or warrant could antagonize the agency.
  - On rare occasions, demanding a subpoena or judicial warrant may be the best course of action; Call Rosasco Law Group to see if your situation warrants this extreme measure.
- **CAL/OSHA** –will almost always ask for a copy of your Illness and Injury Prevention Program, Heat Illness Prevention Plan, and COVID-19 Prevention Plan. Make sure these are up-to-date and on site.

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- **ICE RAID** – requires a search or arrest warrant issued by a court (unless within 25 miles of border or during hot pursuit). No advance notice is required.
  - The warrant identifies the location to be searched and the people or items to be seized.
  - Employers can voluntarily consent to ICE access.
- **AUDIT** – Notice of Inspection (NOI) requires 72 hours advance notice in writing even with a subpoena.
  - Produce only I-9 forms for inspection. Other requests require a valid subpoena.
  - The Company will post a notice at the worksite within 72 hours of receiving a Notice of Inspection (NOI).
  - The Company will provide affected employees with the results of inspection (typically a “Notice of Suspect Documents”) within 72 hours of receipt. This will give instructions and a timeline for correcting any deficiencies.
  - Do not waive your right to 72 hours to produce documents.
  - Make copies of anything produced/taken. If you send originals and do not make copies, and the agency loses them, they are gone forever.
  - DO NOT produce anything that is not requested.
  - Call Rosasco Law Group APC so that we can review, redact, and prepare any document productions. We may also attempt to narrow the scope of information sought.
- Designate one company representative and a backup in each region for handling government visits. Ensure all supervisors know this person must be called and that they must hold the government outside the property/away from workers until your designated representative arrives. (They must wait a reasonable amount of time--15-20 minutes)
- Agents cannot go outside the scope of warrant, subpoena or NOI without your consent.
- Cooperate as required by law; be polite and courteous.
  - Do not offer more information than necessary.
  - Do not guess or make assumptions; if you do not know something, be honest (for example, you can say “I don’t know”, or you can say “Let me get back to you on that”).
- You have the right to accompany government agents during their inspection.
- You do not have the right to be present during employee interviews.
  - You cannot eavesdrop on the government’s interview of employees.
- You are allowed to tell employees that interviews are voluntary; they have the right to refuse to be interviewed.
  - If employees ask your designated representative or supervisory employees whether they should or should not agree to an interview, DO NOT advise them one way or the other.
- Supervisory employees are represented by Rosasco Law Group APC and you can request to schedule a time for agents to speak with foremen/supervisors when your attorney is present. They may schedule interviews through our office.
  - Why? This is critical. Supervisory employees are employer representatives; their

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actions, statements, and the knowledge they possess are binding on the employer.

- Make note of everything that happens. Such as:
  - Write down which Employees were interviewed.
  - A list of all potential witnesses present that day (including representatives from other government agencies).
  - How long employee interviews lasted.
  - If your employees speak Spanish, make a note of:
    - How well the inspector speaks it.
    - That the inspector does not speak Spanish.
    - That the inspector used an interpreter over the phone.
    - Can you tell if the employee is struggling to understand them?
  - How long was the inspection?
  - Did they say why they are conducting an inspection?
- Do NOT panic.
- Do not hide employees.
- Do not advise employees to run.
- Do not help employees escape the property.
- No one is required to answer questions from any government agency.
- You have the right to continue business operations during the visit.
- Require any inspector(s) to follow the same safety protocol(s) required/used in your operations.
- Consult with an attorney before granting access to workers or management.
- Workers have the right not to sign anything.
- Ensure government agency has an interpreter for Spanish speaking employees.
- For anyone in management - Do not sign any declarations or statements without an attorney.
- **At the outset, ask what prompted the visit. You may need to ask this several times.**
- **At the outset, determine the scope of the inquiry. Try and agree to a narrowed scope for voluntary cooperation/immediate access.**
- Do NOT allow anyone from the CRLA (California Rural Legal Assistance) access to your property or workers. Call the Sheriff if they do not immediately leave. They do not have the right to be present no matter what they say, and they cannot accompany the government.
  - Other Examples of Who are Not Enforcers:
    - Other Legal Aid Services (like the CRLA)
    - Labor Unions
    - Private Attorneys
    - Private Investigators
    - News Media
    - Legislators