



ROSASCO
LAW GROUP

USDOL IS INSPECTING CALIFORNIA FARMS!

ARE YOU READY?

PRESENTED BY: ERICA L. ROSASCO, ESQ.



LEGAL disclaimer:

Seminar materials and this presentation are not intended as legal advice and are not legal advice. These materials cannot substitute for legal advice. You should consult an experienced employment attorney if you have questions about your business, policies or your particular circumstances.

GOVERNMENT AGENCIES YOU MIGHT HEAR FROM:

- Labor Commissioner
- Bureau of Field Enforcement
- Labor Employment Task Force (LETF)
- Cal/OSHA
- EDD
- ICE
- DOL
- Desk audits & Letters requesting info
- Back to in person visits



INCREASED PLAINTIFF'S ATTORNEY ACTIVITY



- Records demands, subpoenas and work comp referrals
- Arbitration Agreements remain vital defense tool
- Illegal CAPPING

AB 450 – CA SANCTUARY STATE LAW

- Partially invalidated by court order
- Employers can voluntarily consent to ICE access.



AB 450 – NOTICE OF WORKSITE INSPECTION

For Inspection of I-9 Employment Eligibility Verification Forms

- Employer shall post a **notice** at the worksite (in the language the employer normally uses to communicate) within 72 hours of receiving a Notice of Inspection (NOI) with the following info:
 - 1) The name of the agency conducting the inspection.
 - 2) The date the employer received the notice.
 - 3) The “nature of the inspection” to the extent known.
- Written notice must also be provided to the employee’s “authorized representative” (union) within **72 hours**.
- Must provide an **affected** employee with a **copy** of the NOI “upon reasonable request.”
- Do not waive 72 hours to produce documents.
- Make copies of anything produced/taken.



REQUIRED NOTICE OF INSPECTION FORMS:



- English
https://www.dir.ca.gov/DLSE/LC_90.2_EE_Notice.pdf
- Spanish:
https://www.dir.ca.gov/DLSE/LC_90.2_EE_Notice_Spanish.pdf

I-9 AUDIT – NOTICE OF

RESULTS

- Employer must provide each **affected** employee (and their representative) with a **copy** of the notice that provides the results of inspection (typically a “Notice of Suspect Documents”) within **72 hours** of receipt.
- Must also provide written notice (within 72 hours) to affected employees (and their representative) of the obligations of the employer and the employee with the following:
 - 1) Description of any deficiencies or other items identified.
 - 2) The time period for correcting any deficiencies.
 - 3) The time and date of any meeting with employer to correct deficiencies.
 - 4) Notice that the employee has the right to representation during any meetings with the employer.



AB 450 – NO RE- VERIFICATION OF CURRENT EMPLOYEES

- ❖ Employer may not **re-verify** the employment eligibility of a **current** employee at a time or in a manner not required by federal law, ...

AB 450 - IMMIGRATION



- Any violation of any of the above can carry a fine of up to \$10,000 and criminal action.
- Was amended to provide exclusive enforcement is to Labor Commissioner or Attorney General by civil action...
- ...No PAGA!

EMPLOYERS CONFRONTED WITH AN INSPECTION BY AN IMMIGRATION AGENCY SHOULD DO THE FOLLOWING:



Call	Call attorney and person at company designated to handle agency visits;
Notify	Notify workers and their representatives within 72 hours of receiving the notice of inspection; and
Provide	Provide any affected employee, and their representative, with the results of an inspection within 72 hours of receiving such information from the agency.
Do not produce	Do not produce anything that is not requested.

Homeland Security Investigations

U.S. Department of Homeland Security
1000 7th Avenue, Suite 1000
Seattle, Washington 98104



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

August 23, 2013

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify the employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

Federal regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has scheduled a review of your forms for August 29, 2013. However, you may waive the three-day period, should you wish to do so, by amending and signing page two of this letter and advising this office of your decision.

During the review, Auditor will discuss the requirements of the law with you and inspect your Forms I-9. In addition to the presentation of your Forms I-9, you will need to present any documents copied as part of the employment eligibility verification process. If your business utilizes software for the electronic generation and storage of Forms I-9, you will need to present: the name of the software and vendor utilized; the internal business practices/protocols related to the generation of, use of, storage of, security of, and inspection and quality assurance programs your electronically generated Forms I-9; the indexing system identifying how the electronic information contained in the Form I-9 is linked to each employee; documentation of the system used to capture the electronic signature, including the identity and attestation of the individual signing the Form I-9; and the audit trail. Further, pursuant to 8 CFR 274a.2(c)(1)(ii) Auditor may contact you in the future to schedule a live demonstration of the creation and maintenance of an electronically generated Form I-9.

Office of the Special Agent in Charge

U.S. Department of Homeland Security
630 Sansome Street, 8th Floor
San Francisco, CA 94111



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

January 29, 2018

SF [REDACTED] 018

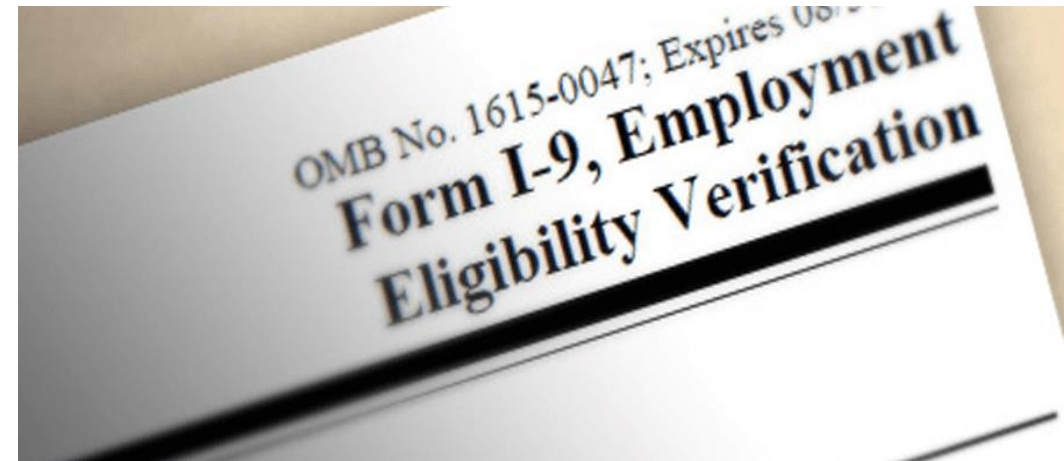
[REDACTED]
[REDACTED]
[REDACTED] CA [REDACTED]

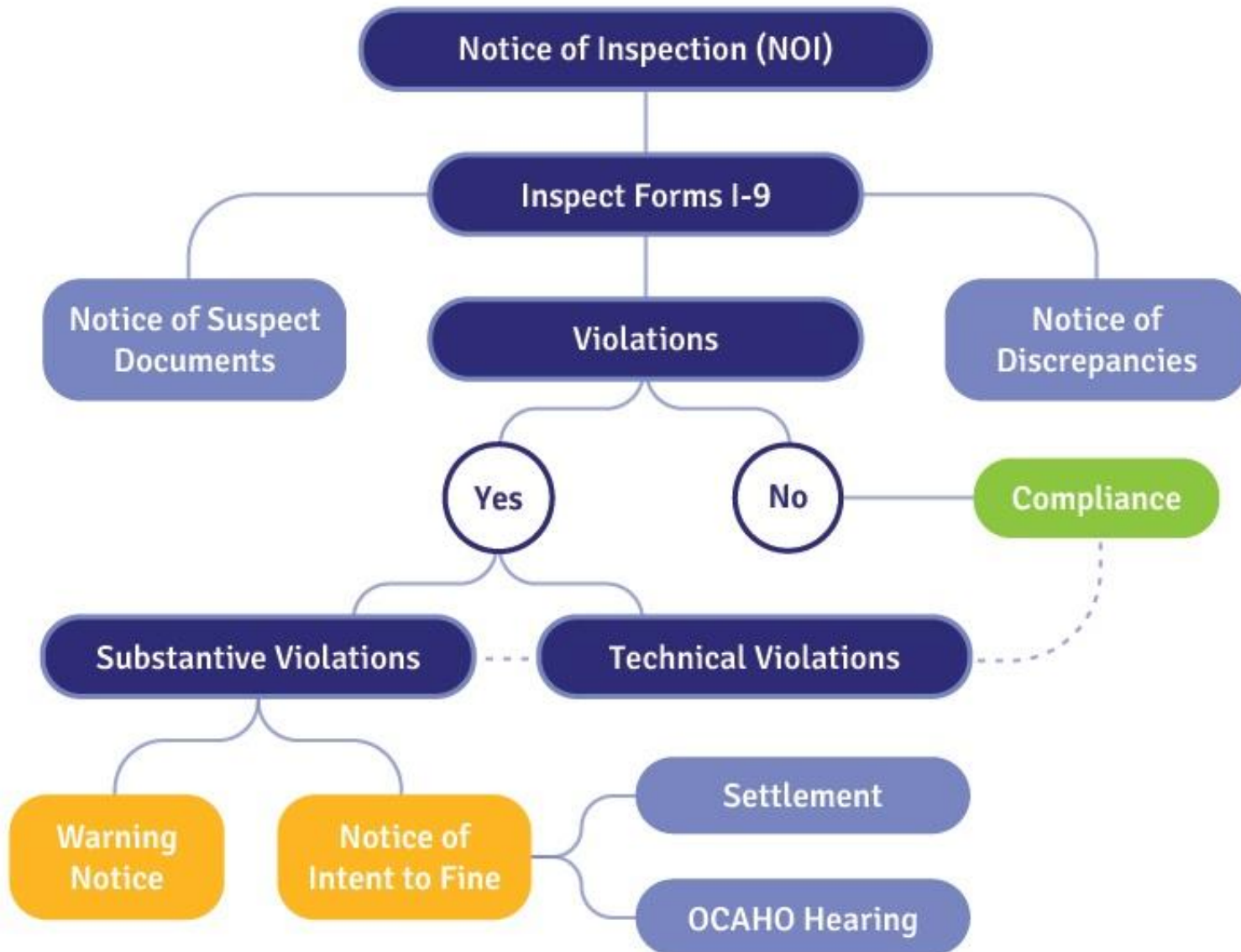
Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended, by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify the employment eligibility of persons hired after November 6, 1986, using the Employment Eligibility Verification Form I-9 (Form I-9).

ICE Audit Process

- **Step 1:** Employer Receives Subpoena/Notice of Inspection (NOI)
 - 3 days to produce originals I-9s plus other items:
 - Payroll records
 - Business licenses, FEIN, articles of incorporation
 - 941 quarterly taxes
 - SSA No Match letters/correspondence
- **Step 2:** ICE Forensics Analysts review I-9 forms (a few weeks to several months)





NOTICE OF INSPECTION

WHAT TO DO WHEN ICE SHOWS UP?

- Confirm their identity.
 - Ask for business cards.
 - Call agency to confirm identity.
- Limit ICE agent's access to public areas only until a Company official determines what access must be granted.
- Employer may demand a **judicial warrant** before granting ICE access to any non-public area of the worksite.
- Employer may demand a **subpoena or judicial warrant** before granting ICE access to review or obtain employee records.
- Voluntary cooperation is usually best.



WHAT TO DO WHEN ICE SHOWS UP?

- **RAID** – requires a search or arrest warrant issued by a court (not ICE) (unless 25 miles of border or hot pursuit). No advance notice is required.
- The warrant identifies the specific location to be searched and the people or items to be seized. Don't go beyond this! Agent cannot wander on otherwise private property.

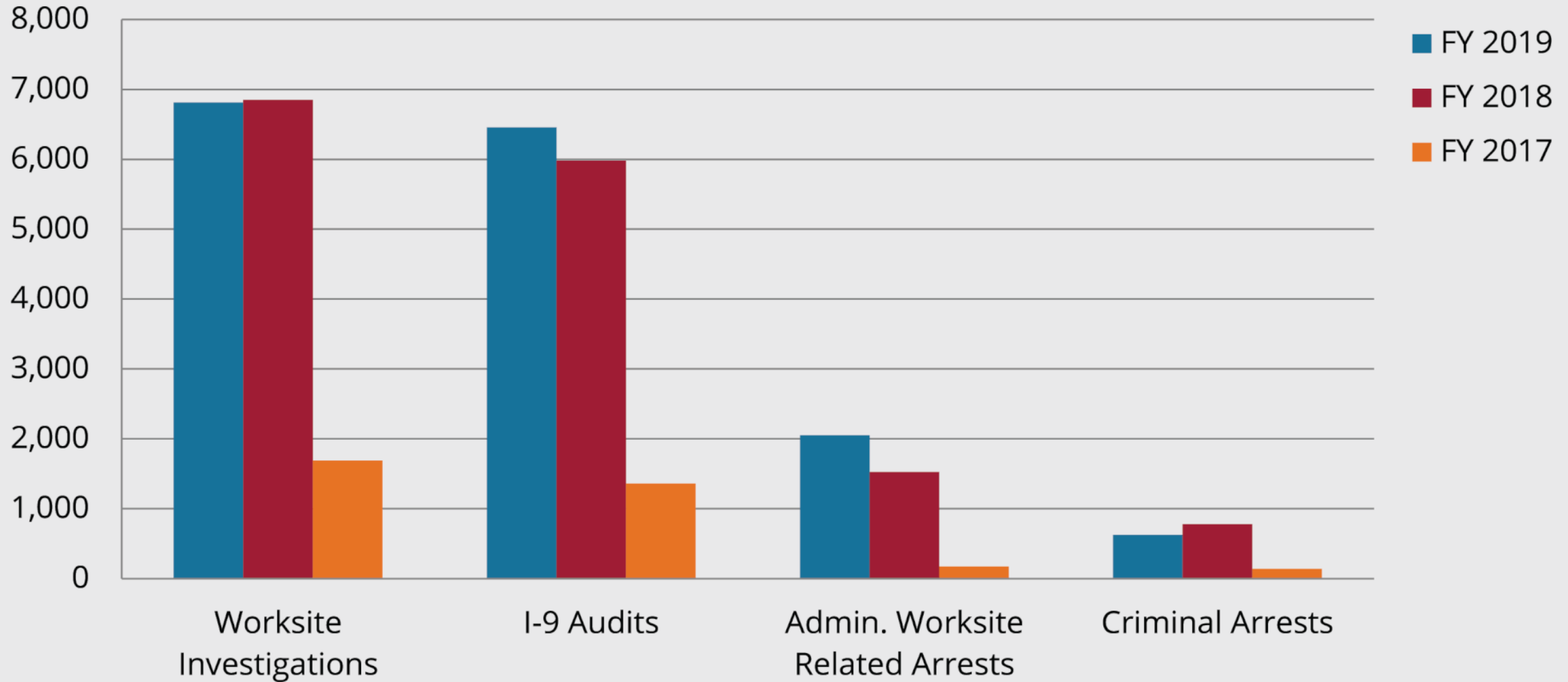


WHAT TO DO WHEN ICE SHOWS UP?



- Cooperate as required by law.
- Accompany ICE officers.
- Take notes of everything that happens.
- 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 ICE.**
- You have the right to continue business operations during the ICE visit.
- **Consult with an attorney before granting access to workers or management.**

Worksite Enforcement Efforts Across All Categories





AGENCY ENFORCEMENT

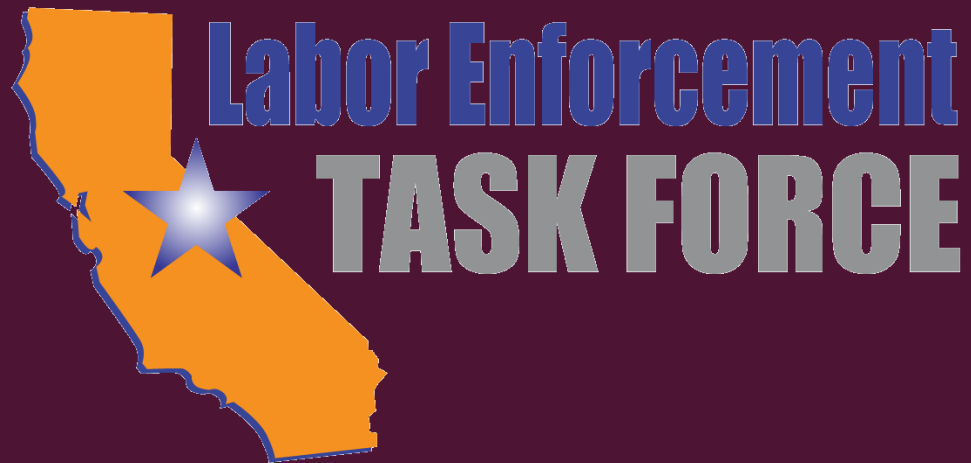
WHAT TO DO WHEN AN
AGENCY SHOWS UP

WHO CAN SHOW UP?



- Department of Labor (DOL)
- EDD
- DLSE (State Labor Commissioner)
- ICE/DHS
- Police
- OSHA
- Task Force (LETF)
- ~~Union~~





LABOR ENFORCEMENT TASK FORCE (LETF)

LETF Members Include:

- Division of Occupational Safety & Health (Cal/OSHA)
- Division of Labor Standards Enforcement (DLSE)
- Employment Development Department (EDD)
- Contractors State License Board (CSLB)
- California Department of Insurance (CDI)
- California Department of Tax and Fee Administration (CDTFA)
- Bureau of Automotive Repair (BAR)
- State Attorney General (DOJ)
- Alcoholic Beverage Control (ABC)

FOCUS OF LETF



Tax evasion



Failure to carry workers' compensation coverage



Cash pay



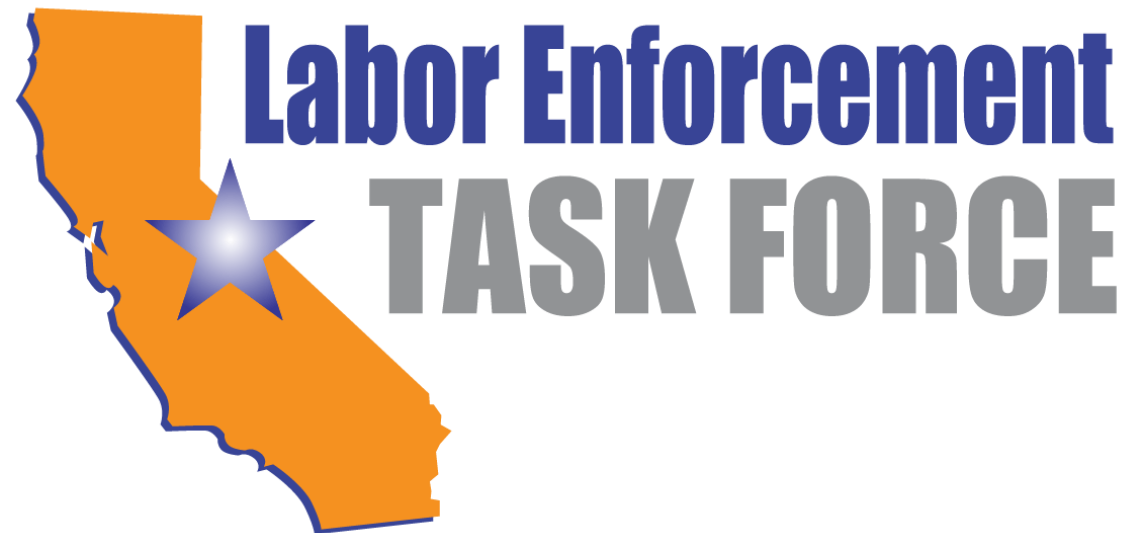
Failure to provide employees with breaks and adequate facilities



Wage theft



Failure to ensure a safe work environment





WHAT TO DO?

- Don't Panic
- Have a plan for who you call in your organization
- Volunteer NOTHING
- Ask for copies of credentials
 - Get the name of the agenc(ies) and every person there
 - Ask questions just don't volunteer info
 - Ask why they are here
 - Examine the credentials
 - Get the person's full name, title, address, phone number and name of investigating agency
- Be courteous and polite
- You can take them to a nonpublic area where employees are NOT located to verify whether they have a warrant provided no consent to search is granted

WHAT TO DO CONTINUED...

- You can call investigator's supervisor to verify identity.
 - If contacted by phone, call them back to ensure identity.
- Find out purpose of investigation. Ask if it stems from complaint and substance of complaint. Ask what statutes or regulations are involved.
- Try to delay investigation to give yourself time to prepare.
- Restrict the inspector to only what they are entitled to see by law and to what is relevant to subject of investigation.



EMPLOYER HAS A RIGHT TO...



- Refuse to allow the investigator on site without a search warrant.
- Request a period of 72 hours to comply with any investigative demand.
- Request that the interviews and on-site inspection take place at reasonable times.
- Engage outside counsel to navigate the investigation process.
- Participate in the opening conference.
- Escort the Investigator through inspections of the workplace.
- Participate in management interviews.
- Protect trade secrets and confidential business information.
- Participate in the closing conference.
- Contest alleged violations.

AN AGENCY HAS THE RIGHT TO DO THE FOLLOWING:

Decline	Decline to provide advance notice of on-site audits.
Investigate	Investigate an employer with or without probable cause or consent.
Inspect	Inspect payroll records.
Conduct	Conduct surveillance, take photographs, and collect evidence.
Conduct	Conduct employee interviews.
Issue and enforce	Issue and enforce subpoenas for records and interviews.

DELAY

Postponed



- Ask the investigator to wait for appropriate company representative to be contacted.
- Try to negotiate a more convenient time.
- Tell the investigator if the investigation will disrupt business
- Information presented must be accurate.
- What is said during the conference is evidence.
- For unannounced on-site visit, investigator will wait a “reasonable amount of time” not to exceed one hour.



U.S. DEPARTMENT OF LABOR

Ask

Ask the DOL to return on another day. The DOL must generally give an employer 72 hours to respond to investigative demands.

Consider

Consider whether to demand a subpoena instead of consenting to investigation when:

- You need additional time before the investigation; and
- The DOL is unwilling to negotiate a reasonable scope or procedure for the investigation.

Note

Note, when the investigation is unannounced, the records sought to be inspected or reviewed might not be on the premises (for example, at a payroll company, with your outside accountants, or in off-premises storage).



SHOULD YOU REQUEST AN ADMINISTRATIVE WARRANT?

- Employer may refuse to produce any records, grant interviews, or produce documents in the absence of a subpoena.
 - In almost all cases the WHD will get the warrant, the inspection will just be delayed by two or three days.
- In lieu of a subpoena, negotiate a reasonable scope of the audit and investigation.
 - Ask the investigator to identify those divisions, departments, personnel, and time period(s) subject to the investigation.



DECIDING HOW TO PROCEED

Consenting to an investigation instead of requiring a subpoena is generally advantageous, but only after negotiating a reasonable scope of the audit.

When evaluating whether to consent to an inspection, consider:

- The risk of signaling to the DOL that you may have something to hide;
- The loss of control over the inspection's scope;
- The benefit of cooperating with the DOL; and
- The benefit of the opportunity to negotiate the scope and procedures of the investigation.

Regardless of subpoena or consent, the DOL's on-site investigation must be conducted:

- At reasonable times (generally during normal work hours);
- In a reasonable manner; and
- Within reasonable limits.

The investigator may not interfere with normal business operations.

INTERVIEW OF EMPLOYEES?



- Make sure they are legally entitled to do so.
- Try to find out purpose to forewarn employees.
- Management can be present for interview of supervisors but NOT non-supervisory employees.
- Be careful not to retaliate against any employee who cooperates with investigation.
 - They are protected!
- Assign one person as the contact person with the investigator.
- Keep good records of everything done and said.

EMPLOYEES SHOULD KNOW THE FOLLOWING:

- Employee interviews are voluntary.
- Employees should not be intimidated because the investigator's credentials look like a police badge.
- Employees are expected to be truthful.
- Employees should listen carefully to all questions asked.
- Employees should never guess or speculate. Employees should only respond with firsthand knowledge.
- Employees should ask the investigator to rephrase confusing questions.
- Employees have the right to have a representative of the facility present during the interview but need not request one.
- Employees can and should request an interpreter. Don't be afraid to call out an interpreter who doesn't speak the language well.



**SUPERVISORS SHOULD
NOT SIGN ANYTHING
WITHOUT COUNSEL**

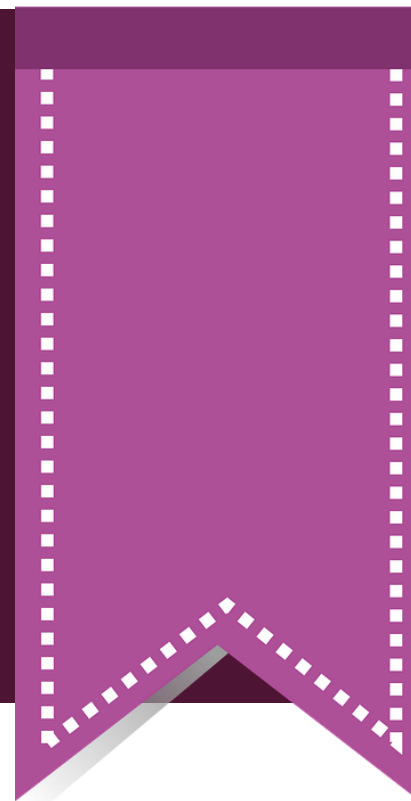
MORE TO KNOW...



- Never agree to a violation until you have considered it carefully and consulted with your labor counsel.
- If the inspector appears without a subpoena or search warrant, you can put them off. Make sure they do not feel stonewalled or ignored.
- You can designate your attorney as your company spokesperson.
- Get a copy of subpoena or search warrant.
- Do not necessarily accept the first offer made by the inspector.
- Watch your timeline to appeal!



**PLEASE SIGN
HERE.....**



FOCUS OF INVESTIGATION

- Payroll records
- Transportation
- Tools
- Paying cash without proper pay statement and taxes
- H2A Users – Housing, inbound/outbound expenses, meals transportation and paying AWER to corresponding domestics
- Wage disclosure forms
- Posters
- Heat illness training
- Unlicensed FLCs/FLCE – have cards on site!
- Independent Contractors (1099 workers)
- I-9s
- Unlawful wage deductions
- Post Accident
- Minors



KNOCK, KNOCK

IT'S THE CRLA! WE'RE
OFFICIAL AND HERE TO
CONDUCT AN AUDIT.



CRLA



WHO ARE NOT ENFORCERS

- Legal Aid Services (CRLA, etc.)
- Labor Unions
- Private attorneys
- Private investigators
- Private consultants
- News media
- Legislators

ALRB EDUCATION INITIATIVE

HEY, CAN I COME AND TALK WITH YOUR FARMWORKERS?

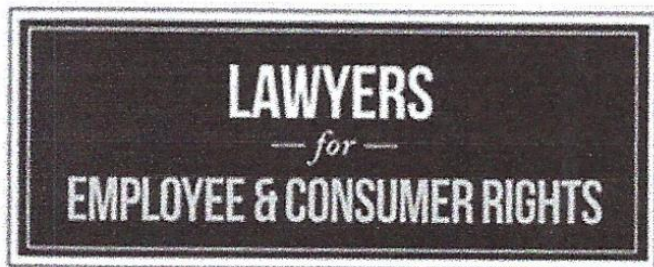






IF I SHOWED UP TODAY AND
STARTED TALKING WITH
YOUR EMPLOYEES, WOULD
THEY KNOW WHAT TO DO?





LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
(323) 375-5101 telephone (general)
(323) 306-5571 facsimile
www.LawyersForEmployeeAndConsumerRights.com

JAMIE BELIN
(323) 306-5785 telephone (direct)
jbelin@lfecr.com

**Confidential Settlement Communication
(Cal. Evid. Code § 1152)**

November 27, 2019

ROSASCO LAW GROUP APC

REGISTERED CLASS MAIL



3580 Wilshire Boulevard, Suite 1260
Los Angeles, California 90010

t | 213.493.6300
f | 213.336.3704

wza@abramsonlabor.com
www.AbramsonLaborGroup.com

June 16, 2021

Via Certified Mail and E-Mail:

[REDACTED]
Attention: Human Resources Director

Re: [REDACTED]

This correspondence is protected by California Evidence Code § 1154 regarding settlement discussions.

ROSASCO LAW GROUP APC

Abramson Labor Group has been retained to represent [REDACTED] (“Plaintiff”) in his claims against [REDACTED] (“Defendant”) for (1) Discrimination in Violation of FEHA; (2) Retaliation in

WARNING:
YOU ARE
ABOUT TO
GET SUED

DON'T BLINDLY TURN OVER RECORDS!!
GET HELP FROM EXPERIENCED LABOR
COUNSEL—NOT YOUR BUSINESS
ATTORNEY.



UPDATE YOUR I-9 FORMS

Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS Form I-9
 OMB No. 1615-0047
 Expires 07/31/2026

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions.

Section 3. Certification: I, attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.

Form is dated August 1, 2023

Instructions have also been updated (M-274)

Find the current form here: [i-9.pdf](https://uscis.gov/i-9.pdf) (uscis.gov)

It's a good time to do an I-9 Audit!



Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
Form I-9
 OMB No. 1615-0047
 Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1, or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number (if any)	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number	
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.						
Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):						
<input type="checkbox"/> 1. A citizen of the United States						
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions.)						
<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)						
<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)						
If you check Item Number 4., enter one of these:						
USCIS A-Number		Form I-94 Admission Number		Foreign Passport Number and Country of Issuance		
Signature of Employee				Today's Date (mm/dd/yyyy)		

If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the [Preparer and/or Translator Certification](#) on Page 3.

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.

Document Title 1	List A	OR	List B	AND	List C
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 2 (if any)	Additional Information				
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					

Check here if you used an alternative procedure authorized by DHS to examine documents.

Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.

Last Name, First Name and Title of Employer or Authorized Representative		Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)
Employer's Business or Organization Name		Employer's Business or Organization Address, City or Town, State, ZIP Code		

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

**CURRENT
 EXPIRATION IS
 JULY 31, 2026**

RETENTION OF I-9S

- Employers must retain original I-9 forms for three years after the date of hire, or one year after the date employment ends, whichever is **later**.
- The forms should be stored separately from other personnel files.
- Use this chart –<http://www.uscis.gov/i-9-central/retain-store-form-i-9/retaining-form-i-9>



Retention

Destruction

I-9S – MOST COMMON ERRORS

Employee completes **Section 1** on or before the first day of employment

Employer has three business days, after the day of hire, to complete **Section 2** and examine original documents (four-day rule)

Employer, or its agent, reviews original documents and completes **Section 2**

No expired documents

Must not hire persons who lack valid work authorization – actual & constructive knowledge

Cannot use a subcontractor relationship (FLC/VMC) to hire someone you have reason to believe is not work authorized

Over documentation - if attach documentation for one then **MUST** do it for all; and can be charged for asking for too much information.

I-9S – GOOD TO KNOW



Employee email, SSN and phone number are **optional**

In cases where an employee has worked for you using a false identity but is currently work authorized, the I-9 rules do not require termination (CA law)

Common errors include date of birth matching today's date

"N/A" is preferred in any open boxes

Employers are only required to review original documents for obvious forgeries

Provide candidates with I-9 list of documents

WHAT
SHOULD YOU
DO?

AN EMPLOYEE AND
HIS ATTORNEY ARE
IN OUR FIELD
INTERVIEWING
EMPLOYEES.



QUESTIONS?



ROSASCO
LAW GROUP

Presented by: Erica L. Rosasco, Esq.
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www.rosascolawgroup.com



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