



EFFECTIVE JANUARY 1, 2018

IMMIGRANT WORKER PROTECTION ACT
PLACES NEW OBLIGATIONS ON EMPLOYERS

(Cal. Gov. Code §§ 7285.1, 7285.2, 7285.3 & Cal. Lab. Code §§ 90.2 and 1019.2)

Starting January 1, 2018, the Immigrant Worker Protection Act (Assembly Bill 450) imposes various prohibitions and requirements on private and public employers with regard to worksite inspections by immigration enforcement agents.

PROHIBITIONS. The Immigrant Worker Protection Act generally prohibits employers from granting immigration enforcement agents voluntary physical access to nonpublic areas of the worksite or access to employee records. Employers, or anyone acting on behalf of the employer, are prohibited, except as otherwise required by federal law, from:

- Providing voluntary consent to an immigration enforcement agent (for example, a U.S. Immigration and Customs Enforcement agent) to enter nonpublic areas of a worksite. However, this provision does not apply if the agent provides a judicial warrant.
- Providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records. However, this provision does not apply if the agent provides a subpoena or judicial warrant. In addition, this provision shall not apply to requests for I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer.
- Re-verifying the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code (generally requiring eligibility verification at time of hire). This provision of the law does not restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system.

REQUIREMENTS. The Immigrant Worker Protection Act requires employers to notify employees of record inspections by federal immigration agencies. Employers are required, except as prohibited by federal law, to:

- Provide each current employee (and the employee's authorized representative, if any) notice of an inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration enforcement agency within 72 hours of receiving notice of the inspection.

Notice shall be by posting in the language the employer normally uses to communicate employment information to the employee and shall contain the following information:

1. The name of the immigration agency conducting the inspection,
2. The date that the employer received notice of the inspection,
3. The nature of the inspection to the extent known, and
4. A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms for the inspection to be conducted.

Notice can be provided using the template available from the California Labor Commissioner:
http://www.dir.ca.gov/DLSE/LC_90.2_EE_Notice.pdf

- Provide, upon reasonable request, an affected employee a copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms.
- Provide an affected current employee, and the employee's authorized representative, if any, a copy of the written immigration agency notice that provides the results of the inspection and written notice of the obligations of the employer and affected employee arising from the inspection results within 72 hours of receipt of the notice of inspection results.

Notice shall relate to the affected employee only and shall be hand delivered at the workplace, if possible, and if hand delivery is not possible, then by mail or email to the affected employee and the affected employee's authorized representative, if any. Notice shall contain the following information:

1. A description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee,
2. The time period for correcting any potential deficiencies identified by the immigration agency,
3. The time and date of any meeting with the employer to correct any identified deficiencies, and
4. Notice that the employee has the right to representation during any meeting scheduled with the employer.

THIS ADVISORY IS INTENDED TO ASSIST EMPLOYERS TO COMPLY WITH THE NEW LAW. Violations may subject employers to civil penalties in a suit brought by the California Attorney General and/or the State Labor Commissioner. In the case of a violation of the employment eligibility reverification provision, an employer shall be subject to a civil penalty of up to \$10,000. The penalties for an employer's failure to comply with the other provisions of the law range from \$2,000 up to \$5,000 for the first violation and \$5,000 up to \$10,000 for each subsequent violation.

THIS ADVISORY SETS FORTH A SUMMARY OF SOME OF THE REQUIREMENTS OF THE IMMIGRANT WORKER PROTECTION ACT. AFFECTED EMPLOYERS SHOULD CONSULT AN ATTORNEY TO ADDRESS ANY QUESTIONS ABOUT THEIR PARTICULAR CIRCUMSTANCES.