

SAMPLE FOURTH AMENDMENT WORKPLACE PROTOCOL

This handout is general information. It is not legal advice. It is not tailored to your situation. Talk to a lawyer for advice and/or legal services. The information on these pages is sourced from “Defend & Recruit” and by “Make North Carolina Work”.

You do not have to comply with unlawful requests from federal agents.

WORKPLACE READINESS CHECK

- Are signs posted marking PRIVATE areas and stating we do not consent to searches? Can public access areas be secured or monitored?
- Who will record if federal agents come to the workplace?
- Who is the point person trained to handle federal agent interactions?
 - Does this person know what an actionable warrant looks like?
 - An ADMINISTRATIVE warrant (I-200) does not allow federal immigration to enter a building. When ICE shows you an administrative warrant with an employee’s name on it:
 - You can deny entry.
 - You do NOT have to say if that employee is working on that day or not
 - You do NOT have to take the ICE agents to the employee named on the warrant (even if he or she is at work at the time).
 - Will the point person call a lawyer to review a warrant?
 - Who is the lawyer they will call?
- Who will be responsible for locking inside doors? Lock any side doors at all times to make sure Federal Agents can’t enter.
- How will staff be alerted quickly if agents enter?
- Have you shared contact information of immigration lawyers with your staff?
- Do you have family contact information for all employees? Do they have a family plan?
- Do staff know their rights – specifically to remain silent and ask for a lawyer if they’re questioned or detained?
- Have staff been trained on the protocol and practiced it?
- Is the Fourth Amendment Workplace Protocol clear and posted in an accessible space for all staff to follow?

IF FEDERAL AGENTS ARE AT THE DOOR (but not inside):

- Lock any business door, start filming, and verbally deny entry.
- Alert staff to the presence of federal agents, direct relevant staff to implement security protocols like closing or locking doors separating public and private areas.
- Call your lawyer.
- Request to see badges, ID and a JUDICIAL warrant.
- If they produce a judicial warrant, review it and/or tell them your lawyer needs to review it.
- Do not share anything about any employees.

IF FEDERAL AGENT(S) ENTER:

- Continue recording.
- Clearly state they are forbidden from accessing private areas without an actionable judicial warrant: "You do not have my permission to enter."
- Do NOT help agents sort people by their immigration status or the country they are from.
- DO loudly inform everyone they do not have to answer any questions or show identification.
- Take note of whether agents are complying with what's written in the warrant. If the agents are searching areas not listed in the warrant, object to those searches by voicing your objection and noting it.
- Call the LUCE hotline at 617-370-5023 to let them know federal agents are present.

IF FEDERAL AGENTS STOP, QUESTION, DETAIN, OR ARREST A WORKER:

- Remind workers they can stay silent and ask for an attorney.
- Remind workers not to sign anything or take "voluntary departure" without the guidance of a lawyer.
- Remind workers they do not have to hand over any IDs or papers to federal agents. Any information that workers give to federal agents can be used against them later.
- Ask agents where any detained or arrested workers are being taken. This will help the worker's family and lawyer find the person.

AFTER AGENTS LEAVE:

- Save any surveillance footage.
- Write or record:
 - How many ICE agents were present (inside and outside)?
 - How were the agents dressed? How were they armed?
 - Did the agents make you or the workers believe you could not move or leave?
 - Did the agents mistreat anyone? If yes, how?
- Make a list of workers who were arrested and immediately notify their family members.
 - Help them find reliable immigration attorneys.
 - Financially support them and ensure their needs are met. Connect them to mutual aid support.
- Notify the employees' union.

THE FOLLOWING COULD PUT YOU IN LEGAL JEOPARDY:

- Physically blocking agents.
- Giving false information.
- Helping someone flee.
- Refusing entry after a valid judicial warrant is presented (must include correct address, signed by a judge, with a clear timeframe and scope).

WHAT TO DO AFTER A FEDERAL ARREST:

After an ICE raid or I-9 Audit, one or more of your workers may face deportation or be unable to return to work. Here is what you can do to provide support to the staff and community:

- Give affected workers leave while they take care of getting their papers, or allow them to return to their same positions with full seniority and benefits once they provide their authorization papers.
- Pay wages and benefits promptly. As required by federal and state labor laws.
- Provide separation pay to workers who cannot return to work. They will need money to support themselves and their families. They may need to pay for legal assistance. If you do not have a separation pay policy, consider giving extra funds to workers in this situation.
- Contribute to an immigration legal fund and contact mutual aid groups. An employee facing deportation will need a good lawyer, and may get the option to be free on bond until their hearing. That means they can stay with their families and communities during this time. They may need your help and their co-workers' help to raise money for the lawyer or bond. You can contribute to an immigration legal fund for this purpose. Or you can set one up.
- Provide a reference to workers for future jobs. Let the workers know you can provide a reference to their potential future employers.

WHAT TO DO IN AN I-9 AUDIT:

- When ICE/HSI notifies you that there will be a Form I-9 audit, contact an immigration lawyer. Also notify the workers and, if they have one, their union representative about the audit.
- The law gives you 3 work days to produce your I-9 Forms. Do not provide your documents early.
- You have the right to speak to your lawyer before answering questions or signing ICE documents.
- Allow the employees to have coworkers or union representatives present when discussing I-9 audits. After reviewing the I-9 forms, ICE may find some employees are not authorized to work. If that happens, ICE will give you 10 days to provide valid work authorization for these employees. If you can't provide the documents by that time, you will be told to end their employment.
- If this happens, you must notify the affected workers of the audit.
- Ask ICE/HSI for more time. This will give affected workers more time to talk to an immigration lawyer.
- If the workers belong to a union, you may need to provide copies of the audit documents to the union and work with the union as you respond to the audit.