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**Julie A. Su**

*California Labor Commissioner  
Division of Labor Standards Enforcement*

**STAFF MEMORANDUM**

**DATE:** July 7, 2017

**TO:** ALL STAFF

**IMPACT ON:** ALL STAFF

**FROM:** Julie A. Su, Labor Commissioner  
Christina N. Chung, Special Counsel  
Julia Figueira-McDonough, IRC IV

**SUBJECT:** Protocols: Responding to Federal Immigration Agents  
Who Attempt to Enter Labor Commissioner Offices

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**ISSUE:**

Staff have raised questions about how to respond when a federal immigration agent (ICE or Border Patrol) shows up at one of our offices, and is looking for a worker who is participating in a Labor Commissioner proceeding or investigation. Understandably, concerns have increasingly been expressed by staff about this scenario, perhaps at least in part due to various media reports that ICE agents have detained individuals at courthouses, homeless shelters, bus stops, and schools. Staff may have also heard about instances where ICE has actually appeared at or called one of our offices and asked about a particular worker – most likely as a result of unlawful retaliation by the employer.

This staff memo is being issued to provide staff with guidelines on approaching federal immigration agents who attempt to enter our offices in order to find and potentially detain a worker. The memo is a companion piece to the May 2017 staff memo, “Protocols to address immigration-related threats and retaliation by employers.”

**BACKGROUND:**

Under existing law, a worker’s immigration status is irrelevant in determining whether an employer has violated state labor laws. *See* Labor Code Section 1171.5. The Labor Commissioner’s Office enforces state labor laws on behalf of all workers, regardless of immigration status.

The previous staff memo issued in May 2017 discussed various provisions of the California Labor Code and Penal Code that sanction employers who use immigration-based threats to retaliate unlawfully against a worker for exercising his or her rights, and the procedures for staff to follow

with respect to documenting such violations, reporting them to the CIU, and initiating an RCI investigation.

**This memo sets forth protocols for staff in the related and specific scenario where a federal immigration agent seeks to enter our office and search for a worker.**

Core constitutional principles form the basis of these protocols, which are not aimed at interfering with the enforcement of federal immigration laws, nor are they political in nature. Whatever one's personal politics may be, as Labor Commissioner staff, we certainly all share the same goal of ensuring that appropriate procedures are put in place to enable us to do our jobs.

There is no doubt that the presence of federal immigration agents in our offices would have a substantial chilling effect on the willingness of workers to report labor law violations and to participate in our enforcement activities. If a worker believed that coming to our offices could potentially make her the target of ICE enforcement, she would most likely not step forward in the first place to assist with our enforcement efforts. Indeed, the Ninth Circuit has noted that the specter of immigration enforcement casts a wide net of fear among *all* workers, regardless of immigration status, and that even documented workers may be chilled in the exercise of their rights.<sup>1</sup> See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004). Moreover, allowing an immigration agent to freely enter and remain in our office also enables unscrupulous employers who have contacted ICE to reap the benefits of their unlawful retaliation against a worker.

We must all appreciate the considerable harm – not only to workers generally but also to our ability to fulfill our basic law enforcement responsibilities to the people of California – that would result if we make no meaningful attempt to respond to federal immigration agents who show up at our offices, including our waiting rooms, in order to seek out and apprehend workers. To this end, the protocols address the twin goals of protecting the integrity and vitality of our enforcement efforts, as well as protecting our staff.

#### **UPDATE:**

The attached protocols outline the steps that staff should take if a federal immigration agent comes to a Labor Commissioner office, and include the following guidelines:

- Labor Commissioner staff **should not voluntarily** permit a federal immigration agent to enter **any part of our office**. Staff should **ask the agent to leave our office, including the waiting room, and inform the agent that the Labor Commissioner does not consent to entry or search of any part of our office**. Doors that lead to the inner office suite, and office doors that are generally locked or shut, **should not be voluntarily** opened for the agent.
- If the agent does not leave upon the initial verbal request, the agent should be asked for a **search warrant signed by a judge** that allows the agent to enter and search our office. Staff are directed to contact designated Labor Commissioner Attorneys should an agent actually present a warrant. If the agent states that he or she does not have a warrant, staff

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<sup>1</sup> Unfortunately, we can only anticipate that such understandable fear among workers will be even more widespread in light of recent events. Indeed, it is not hard to foresee that an ICE agent could in fact end up targeting more individuals in our offices than just the worker who is initially sought by the agent.

should again ask the agent to leave our office, including the waiting room, and state that the Labor Commissioner does not consent to the agent's entry or search of any part of our office.

- **Staff should never physically interfere with an agent**, even if the agent does not have a judicial search warrant. If after being asked to leave, the agent refuses and demands entry, and threatens staff in any way, staff should comply with the agent's demand. But at the same time, staff should **inform the agent that they are not consenting to entry or search by the agent**.
- As much as possible, all communication with the agent should be made by a Labor Commissioner Attorney (if present) or a Senior Deputy if an Attorney is not present. A buddy system should be in place so that whenever possible, more than one staff person is present during all interactions with the agent.
- Staff should document all interactions with federal immigration agents who show up at our offices, including noting that voluntary consent to enter and search our office was not provided.
- Staff should **not** provide the following information to an agent: whether the worker who is the subject of the agent's inquiry is present in the waiting room or elsewhere in the office; a list of the parties who are scheduled to appear that day, or the sign-in sheet; the worker's address or phone number; any upcoming conference or hearing date on the worker's claim; or whether the worker being sought even has a claim before us or is participating in a proceeding before us, including the status of any case or investigation (Wage, BOFE, PW, or RCI).
- In general, staff are reminded that they should not inquire into the immigration status of any person, including claimants or witnesses, nor make any assumptions about the immigration status of any person.
- Nothing in this policy directs staff to hide or conceal a worker who is being sought by an agent. For example, under these protocols (as well as current practice), staff may of course escort or show a worker to any part of our office (including behind closed doors), for the purpose of allowing the worker to obtain information about labor laws, to participate in one of our proceedings, or to be interviewed by a Deputy or Attorney. These protocols also make clear that staff should not give certain information (as noted above) to an agent. Such procedures enable us to fulfill our duty to enforce state labor laws. They are not aimed at hiding or concealing a worker from an agent.

**“Office” as used in this policy includes the waiting room; conference rooms; hearing rooms; meeting rooms; deputy offices; attorney offices; and any other room or part of an inner office suite or inner hallway connecting the suite.**

Staff should carefully review the protocols (including all attachments) for more detailed procedures.

**IN SUM:**

Protocols are being implemented to give clear direction to staff when a federal immigration agent attempts to enter any part of a Labor Commissioner office, including a waiting room, in search of a worker.

*PROTOCOLS:  
RESPONDING TO FEDERAL IMMIGRATION AGENTS  
WHO ATTEMPT TO ENTER LABOR COMMISSIONER OFFICES*

## OVERVIEW

- The presence of federal immigration agents (including ICE or California Border Patrol) in Labor Commissioner offices would have a substantial negative chilling effect on a worker's willingness to report wage theft and other labor law violations, and thus would severely undermine our ability to enforce critical labor law protections – to the detriment of all California workers and law-abiding employers. Allowing an immigration agent to freely enter and remain in our office also enables unscrupulous employers who have contacted ICE to reap the benefits of their unlawful retaliation against a worker.
- Therefore, Labor Commissioner staff **should not voluntarily** permit a federal immigration agent to enter **any part of our office**. "Office" as used here includes the waiting room; conference rooms; hearing rooms; meeting rooms; deputy offices; attorney offices; and any other room or part of an inner office suite or inner hallway connecting the suite. Staff should **ask the agent to leave our office, including the waiting room, and inform the agent that the Labor Commissioner does not consent to entry or search of any part of our office**. Doors that lead to the inner office suite, and office doors that are generally locked or shut, **should not be voluntarily** opened for the agent.
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