IMMIGRANT WORKER PROTECTION ACT (ASSEMBLY BILL 450) FREQUENTLY ASKED QUESTIONS

The California Labor Commissioner and California Attorney General provide this joint guidance on AB 450.

Updated 02/18/25

1. Q: What is the Immigrant Worker Protection Act (AB 450)?

A: The Immigrant Worker Protection Act (AB 450, eff. Jan. 1, 2018) sets forth certain requirements for employers regarding worksite inspections by immigration enforcement agents.

AB 450 governs requests from an immigration enforcement agent to enter the employer's place of business or requests to access employee records, subject to certain specified exceptions. It also sets forth certain specific notice requirements to employees if the employer receives notice from an immigration agency of an upcoming inspection of I-9 Employment Eligibility Verification Forms or other employment records. Finally, it sets forth parameters for employers regarding when they may or may not reverify employment eligibility of any current employee in compliance with federal law and regulations. The details of these provisions are discussed more fully below.

2. Q: Which employers are subject to AB 450?

A: The law applies to all public and private employers.

3. Q: What should employers do if an immigration enforcement agent seeks to enter the employer's place of business?

A: Employers, or persons acting on behalf of the employer, shall not provide **"voluntary consent"** to the entry of an immigration enforcement agent to **"any nonpublic areas of a place of labor."**

This provision does not apply if the agent enters a nonpublic area **without the consent** of the employer or other person in control of the place of labor or if the immigration enforcement agent presents **a judicial warrant**. In addition, employers are not precluded from taking an agent to a nonpublic area if all of the following are met: (1) employees are **not** present in the nonpublic area; (2) the agent is taken to the nonpublic area for the purpose of verifying whether the agent has a judicial warrant; and (3) **no consent** to search the nonpublic area is given in the process.

See Government Code Section 7285.1.

4. Q: What does it mean to provide "voluntary" consent to the entry of an immigration enforcement agent?

A: In general, for consent to be voluntary, it should not be the result of duress or coercion, either express or implied.

An example of providing "voluntary" consent to enter a nonpublic area could be freely asking or inviting an immigration enforcement agent to enter that area. This could be indicated by words and/or by the act of freely opening doors to that area for the agent, for instance.

Whether or not voluntary consent was given by the employer is a **factual, case-by-case determination** that will be made **based on the totality of circumstances** in each specific situation.

This law does not require physically blocking or physically interfering with the entry of an immigration enforcement agent in order to show that voluntary consent was not provided.

5. Q: What is a "nonpublic" area of a place of labor?

A: The statute does not define the meaning of "nonpublic" area nor otherwise indicate that the term "nonpublic" should be given anything but its usual or ordinary meaning. A "nonpublic" area is one that **the general public is not normally free to enter or access.** For example, this could be an office where payroll or personnel records are kept, or an area that an employer designates (for instance, by posting signs or keeping doors closed) as restricted to employees or management of the business.

AB 450's voluntary consent provision does not apply to a "public" area of a place of labor – an area that the general public *is* normally free to enter and access – such as the dining room of a restaurant or the sales floor of a store during business hours.

Under AB 450, an employer's designation (or non-designation) of an area as "nonpublic" or "public" is not dispositive. It is important to recognize that **every place of employment is different and whether or not a business premise, or any part thereof, constitutes a "nonpublic" area of a place of labor is a factual, case-by-case determination that will depend on an assessment of all the circumstances in any given situation.**

Employers may wish to consult with their own legal counsel about their specific situation. Separate from understanding what is required under AB 450, employers may also wish to consult with their own legal counsel about any constitutional protections that may apply to their situation (and how to safeguard any such protections) if an immigration enforcement agent shows up at the employer's place of business.

6. Q: What should employers do if an immigration enforcement agent tries to access, review, or obtain employee records?

A: Employers, or persons acting on behalf of the employer, shall not provide **"voluntary consent"** to an immigration enforcement agent **"to access, review, or obtain the employer's employee records."**

This provision does not apply if the agent accesses, reviews, or obtains employee records **without the consent** of the employer or other person in control of the place of labor.

In addition, exceptions to this provision apply if:

- The immigration enforcement agent provides a **subpoena** for the employee records; or
- The agent provides a **judicial warrant** for the employee records; or
- The employee records accessed, reviewed, or obtained by the immigration enforcement agent are **I-9 Employment Eligibility Verification forms and other documents that are requested in a Notice of Inspection** issued under federal law.

Employers may wish to consult with their own legal counsel about compliance with federal immigration law, and any legal obligations if an immigration enforcement agent issues a Notice of Inspection, subpoena, or judicial warrant for employee records.

See Government Code Section 7285.2.

7. Q: What does it mean to provide "voluntary" consent to an immigration enforcement agent to access, review, or obtain employee records?

A: In general, for consent to be voluntary, it should not be the result of duress or coercion, either express or implied.

Examples of providing "voluntary" consent could be freely stating to an immigration enforcement agent that the agent may look at employee records, freely telling the agent where to find employee records, or freely turning on a computer or opening a file cabinet (in which employee records are kept) for the agent.

It is important for employers to understand that whether or not voluntary consent was given by the employer is a **factual, case-by-case determination** that will be made **based on the totality of circumstances** in each specific situation.

This law does not require physically blocking or physically interfering with an immigration enforcement agent in order to show that voluntary consent was not provided.

8. Q: AB 450 refers to a "judicial warrant." What type of document qualifies as a judicial warrant?

A: A judicial warrant is a warrant that has been reviewed and signed by a judge upon a finding of probable cause. The name of the issuing court will appear at the top of the warrant.

Documents issued by a government agency but not issued by a court and signed by a judge are not judicial warrants. An immigration enforcement agent may show up with something called an "administrative warrant" or a "warrant of deportation or removal." These documents are **not** judicial warrants.

Under Government Code sections 7285.1 and 7285.2, the AB 450 provisions do not apply when an immigration enforcement agent provides the employer with a judicial warrant. There is no statutory exception to AB 450 if the agent provides an administrative warrant.

Employers may wish to consult with their own legal counsel to understand the differences between judicial warrants and administrative warrants, and the employer's legal rights and obligations (separate from any obligations under AB 450) if presented with either type of warrant. An employer may also wish to consult with their own legal counsel about any constitutional protections that may apply to their specific situation (and how to safeguard any such protections).

Employers should understand that not all warrants will appear the same, and that they may wish to consult with their own attorney when presented with a purported warrant.

9. Q: AB 450 also refers to a "subpoena." What is a subpoena?

A: A subpoena is a legal demand for the appearance of a witness or the production of documents or other evidence at a specific time and place. It can be issued under the authority of a government agency or an attorney without the need for prior court approval if the agency or attorney is authorized to issue subpoenas under the law. A subpoena must describe the particular information sought.

Employers need to be aware that AB 450 sets out different and distinct exceptions. Under the law, where an immigration enforcement agent seeks to access, obtain, or review employee records, the obligation under Government Code section 7285.2 **does not apply** if the agent provides a **subpoena** (or a judicial warrant or Notice of Inspection for I-9 forms and other documents). This **exception when an immigration enforcement agent has a subpoena is limited to the situation where the agent seeks to access, obtain, or review employee records** (under Govt. Code section 7285.2). In the case where an immigration enforcement agent enters a nonpublic area of a place of labor with the voluntary consent of the employer, there is no statutory exception under Government Code section 7285.1 if the agent has a subpoena. (For questions on AB 450 requirements regarding entry of an agent into a nonpublic area of a place of labor, please see FAQs 3, 4, and 5.)

Employers should understand that not all subpoenas will appear the same, and that they may wish to consult with their own attorney when presented with a purported subpoena.

10. Q: As an employer, what should I do if an immigration enforcement agent provides a subpoena or judicial warrant for employee records?

A: When provided with a subpoena or judicial warrant for employee records by an immigration enforcement agent, employers may wish to consult with their own legal counsel about their legal rights and obligations in order to evaluate the request and to determine how to respond.

AB 450 specifies that it does **not** prohibit an employer, or person acting on behalf of an employer, from challenging the validity of a subpoena or judicial warrant in court.

Any challenge to, or compliance with, a subpoena or judicial warrant for employee records are separate matters that are not addressed by AB 450.

11. Q: Under AB 450, what are the notice requirements that an employer must follow?

A: The law requires that an employer provide the following written notices to employees regarding an inspection by an immigration agency of I-9 Employment Eligibility Verification forms ("I-9 forms") or other employment records, including the results of any such inspection:

(1) Notice of inspection of I-9 forms or other employment records. **Within 72 hours of receiving** a Notice of Inspection of I-9 forms or other employment records by an immigration agency, an employer shall provide notice of the inspection **to each current employee, and to the employee's exclusive collective bargaining representative (if any)**. The notice to employees shall include the name of the immigration agency conducting the inspection; the date the employer received the Notice of Inspection; the nature of the inspection to the extent known; and a copy of the Notice of Inspection.

This notice to employees shall be **posted by the employer** in the **language normally used by the employer to communicate employment-related information to the employee**.

The Labor Commissioner has provided a template posting that employers may use to comply with this provision.

Upon reasonable request, an employer shall also provide an affected employee with a copy of the Notice of Inspection from the immigration agency.

(2) Notices relating to inspection results. **Within 72 hours of receiving** written notice from the immigration agency of the results of the inspection of I-9 forms or other employment records, an employer shall also provide **to each current affected employee, and to the employee's exclusive collective bargaining representative (if any):**

- A copy of the written notice from the immigration agency that provides the results of the inspection of the I-9 forms or other employment records; and
- Written notice of the obligations of the employer and the affected employee arising from the results of the inspection, which shall include a description of any and all deficiencies or other items identified by the immigration agency (in its written notice of inspection results) that relate to the affected employee; the time period for correcting any potential deficiencies identified by the immigration agency; the time and date of any meeting with the employer to correct any identified deficiencies; and notice that the employee has the right to representation during any meeting scheduled with the employer. Each affected employee's notice shall relate only to that individual affected employee, and shall be delivered to the employee by hand at the workplace if possible, or by mail and e-mail (if known) if hand delivery is not possible.

An "affected employee" to whom notice of the above must be provided by the employer is an employee identified by the immigration agency's inspection to be an employee who may lack work authorization, or whose work authorization documents have been identified as having deficiencies.

See Labor Code Section 90.2.

12. Q: Is the 72-hour time period for posting a notice to employees of an inspection of I-9 forms or other employment records triggered by a visit by immigration enforcement agents?

A: No. Under the law, the triggering event for the 72-hour period to post a notice is the receipt of a Notice of Inspection of I-9 forms or other employment records. While a Notice of Inspection is often delivered during a visit from immigration enforcement agents, it could also be delivered or served without an actual visit from government agents. Employers should understand both that a visit from immigration enforcement agents does not automatically trigger the 72-hour period unless they serve a Notice of Inspection seeking I-9 and/or other employment records during such a visit, and that the 72-hour period can be triggered without any visit at all from immigration authorities if a Notice of Inspection is delivered by some means other than in person. Under AB 450, regardless of how it is delivered, a valid Notice of Inspection requires employers to post a notice to all current employees within 72 hours of receipt.

However, the provision is not violated if an employer fails to provide notice to an employee at the express and specific direction or request of the federal government.

See Labor Code Section 90.2.

13. Q: When may employers reverify the employment eligibility of current employees?

A: An employer, or a person acting on behalf of an employer, shall not reverify the employment eligibility of any current employee **at a time or in a manner that is not required** by Section 1324a(b) of Title 8 of the United States Code.

An employer is permitted to do the following under AB 450:

- Reverify an employees' employment authorization in a time and manner consistent with Section 274a.2(b)(1)(vii) of Title 8 of the Code of Federal Regulations.
- Take any lawful action to review the employment authorization of an employee upon knowing that the employee is, or has become, unauthorized to be employed in the United States, consistent with Section 1324a(a)(2) of Title 8 of the United States Code, including in response to specific and detailed information from any agency within the U.S. Department of Homeland Security indicating that an employee is not authorized to be employed in the United States.
- Remind an employee, at least 90 days before the date reverification is required, that the employee will be required to present document(s) as required by the I-9 Employment Eligibility Verification Form, showing continued employment authorization on the date that their current employment authorization will expire or on the date that their current documentation will expire, whichever date is sooner.
- Take any lawful action to correct errors or omissions in a missing or incomplete I-9 Employment Eligibility Verification Form.

For the purposes of this section, the term "knowing" is defined as set forth in Section 274a.1(l) of Title 8 of the Code of Federal Regulations and as interpreted by applicable federal rules, regulations, and controlling federal case law. The terms "reverify" or "reverifying" mean the actions described in Section 274a.2(b)(1)(vii) of Title 8 of the Code of Federal Regulations and as interpreted consistently with any applicable federal rules, regulations, and controlling federal case law.

See Labor Code Sections 1019.2, 1019.4.

14. Q: Does AB 450 require employers to defy federal requirements?

A: No. Compliance with AB 450 does not compel any employer to violate federal law. Rather, it may require employers in some instances to decline requests for voluntary cooperation by federal agents. However, the statute makes clear that its provisions only apply "[e]xcept as otherwise required by federal law" and do not restrict or limit an employer's compliance with any memorandum of understanding governing use of the federal E-Verify system.

15. Q: Who enforces AB 450?

A: The California Attorney General and California Labor Commissioner (https://www.dir.ca.gov/dlse) have exclusive authority to enforce this law through a civil action. See Government Code sections 7285.1(b), (d) and 7285.2(b), (c).