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.

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

   A: Starting **January 1, 2018**, the Immigrant Worker Protection Act (AB 450) imposes various prohibitions and requirements on employers with regard to worksite inspections by immigration enforcement agents.

   The law sets forth certain prohibitions on employer conduct if an immigration enforcement agent seeks to enter the employer's place of business or requests employee records, subject to certain specified exceptions. It also mandates that employers comply with 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 prohibits employers from reverifying employment eligibility of any current employee at a time or in a manner not required by federal immigration law. The details of employer obligations under these provisions, which trigger certain penalties for their violation, are discussed more fully below.

2. **Q: Who is charged with enforcing AB 450?**

   A: The California Attorney General and California Labor Commissioner have exclusive authority to enforce this new law.

3. **Q: Which employers are subject to the provisions of AB 450?**

   A: The provisions of this law apply to all public and private employers.

4. **Q: What does this law prohibit employers from doing if an immigration enforcement agent seeks to enter the employer's place of business?**

   A: The law prohibits employers, or persons acting on behalf of the employer, from providing **"voluntary consent"** to the entry of an immigration enforcement agent to **"any nonpublic areas of a place of labor."**

   Accordingly, there is no violation of this provision if the agent enters a nonpublic area **without the consent** of the employer or other person in control of the place of labor. In addition, employers are not precluded from taking an agent to a nonpublic area if employees are **not** present in the nonpublic area; the agent is taken to the nonpublic area for the purpose of verifying whether the agent has a judicial warrant; and **no consent** to search the nonpublic area is given in the process.

See Government Code Section 7285.1.

5. **Q: Is there any penalty if an employer provides voluntary consent to the entry of an immigration enforcement agent to a nonpublic area of a place of labor?**

   A: Yes. Employers that violate this provision are subject to civil penalties of $2,000 to $5,000 for a first violation, and $5,000 to $10,000 for each subsequent violation. For purposes of this penalty, a "violation" means each incident when it is found that a violation occurred, regardless of the number of employees, the number of immigration enforcement agents involved in the incident, or the number of locations affected in a day.

   However, an employer would **not** be subject to this penalty provision if the immigration enforcement agent provides **a judicial warrant**.

   Government Code Section 7285.1.

6. **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.

   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 the entry of an immigration enforcement agent in order to show that voluntary consent was not provided.

7. **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.

   The prohibition under AB 450 against providing voluntary consent to the entry of an immigration enforcement agent 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.

8. **Q: What does this law prohibit an employer from doing if a federal immigration agent tries to access, review, or obtain employee records?**

   A: The law prohibits employers, or persons acting on behalf of the employer, from providing **"voluntary consent"** to an immigration enforcement agent **"to access, review, or obtain the employer's employee records."**

   Accordingly, there is no violation of this provision 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.

   See Government Code Section 7285.2.

9. **Q: Is there any penalty if an employer provides voluntary consent to an immigration enforcement agent to access, review, or obtain employee records?**

   A: Yes. Employers that violate this provision are subject to civil penalties of $2,000 to $5,000 for a first violation, and $5,000 to $10,000 for each subsequent violation. For purposes of assessing this penalty, a "violation" means each incident when it is found that a violation occurred, regardless of the number of employees, the number of immigration enforcement agents involved in the incident, or the number of employee records accessed, reviewed, or obtained.

   However, an employer would **not** be subject to this penalty provision 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 need to be aware that the new law sets out different and distinct exceptions to its penalty provisions. In the case where an immigration agent seeks to enter a nonpublic area of a place of labor, the penalty provision (under Govt. Code Section 7285.1) does not apply if the agent provides a judicial warrant. However, in the case where an immigration agent seeks to access, obtain, or review employee records from the employer, the penalty provision (under Govt. Code Section 7285.2) does not apply if the agent provides either a subpoena or judicial warrant for the employee records, or a Notice of Inspection for I-9 forms and other documents. 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.

10. **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.

11. 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 AB 450, both of the penalty provisions noted above (under Govt. Code Sections 7285.1 and 7285.2) do not apply when an immigration enforcement agent provides the employer with a judicial warrant. There is no statutory exception to the penalty 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).

See here for a sample of a judicial warrant. 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.

12. 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 to its penalty provisions. Under the new law, where an immigration enforcement agent seeks to access, obtain, or review employee records, the penalty provision noted above (under Govt. 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 **penalty 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 to the separate penalty (under Govt. 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 4-7.)

See here for a sample of a subpoena. 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.

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

A: When confronted 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.

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

A: The new state law requires that an employer must 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 must provide notice of the inspection **to each current employee, and to the employee's exclusive collective bargaining representative (if any)**. The notice to employees must 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 must 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 must 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 must 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 must 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 must 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.

15. 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 new state 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. It is important for employers to 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.

16. Q: Is there any penalty if an employer fails to comply with the foregoing notice provisions relating to an inspection by an immigration agency of I-9 forms or other employment records?

A: Yes. An employer who fails to provide the required notices is subject to civil penalties of $2,000 to $5,000 for a first violation, and $5,000 to $10,000 for each subsequent violation.

However, the penalty will not apply 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.

17. Q: Is there any other employer conduct that is prohibited under AB 450?

A: Yes. AB 450 also prohibits an employer, or a person acting on behalf of an employer, from reverifying 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. Violation of this prohibition subjects the employer to a civil penalty up to $10,000.

See Labor Code Section 1019.2.

18. 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.