



Workplace Immigration Law in 2025: What Restaurants Should Expect

January 22, 2025

Immigrants are an important part of the restaurant industry—over 20% of all U.S. workers in the food services industry. Many immigration policies will change in the coming months. The National Restaurant Association and the Restaurant Law Center are actively monitoring these developments and will keep our industry informed and prepared.

We have partnered with the law firm of Fisher Phillips to pull together top predictions for the new year and address some of the changes already taking place. We will offer a complimentary webinar on workplace immigration compliance on February 10, 2025, at 2:00pm EST.

Heightened Immigration Enforcement

President Trump has pledged to focus on immigration enforcement, and his announcement that former ICE Acting Director Tom Homan would serve as the new “border czar” is strong reminder that employers should anticipate major changes. Also, on day one, the President signed an Executive Order specifically on enhancing immigration enforcement, giving Homan additional tools. With Homan set to lead an aggressive enforcement strategy, restaurants should take concrete steps to safeguard their operations and be prepared to handle potential ICE audits and raids. Below are five practical preparation suggestions for restaurants to consider:

1. **Understand the Risks of Immigration Violations** – Employers who fail to comply with immigration regulations face significant penalties, including:
 - a. Civil Fines.
 - b. Criminal Penalties.
 - c. Debarment from lucrative federal contracts.
 - d. Operational Disruptions.
2. **Take Steps to Minimize the Likelihood of a Raid** – A proactive approach is essential to reduce the chances of an ICE visit. Some core areas for compliance that employers should address immediately include:
 - a. Establish I-9 Compliance.
 - b. Conduct Regular I-9 Audits.
 - c. Provide Managers and HR Employee Training.
 - d. Consider Using E-Verify.
 - e. Establish a Rapid Response Plan.
3. **Know How to Respond if ICE Initiates an Audit** – This is the most common way in which restaurants might end up interacting with enforcement officials. An ICE audit is often

initiated through a Notice of Inspection, which requires employers to produce I-9 forms and additional records within three days. If your restaurant receives such a notice, you should:

- a. Contact Legal Counsel Immediately.
 - b. Gather and Verify Documentation.
 - c. Review Findings and Correct Errors.
4. Know What to Do if Subjected to an ICE Raid – Raids are highly disruptive, often involving immediate inspections and potential detentions. We suggest you follow these steps to stay compliant while minimizing operational risks:
- a. Request and Examine the Warrant. (Sample Judicial vs. ICE Warrant included below. Judicial Warrants give access to nonpublic areas, ICE Warrants do not.)
 - b. Monitor but Don't Interfere.
 - c. Avoid Actions that Could be Construed as Harboring.
 - d. Document and Report Seized Property or Records.
 - e. Manage Public Relations.
5. Prepare for Workforce Disruptions and Absences – If fear of raids affects attendance, know that certain forms of collective action, including work stoppages, may be protected by the National Labor Relations Act (NLRA) – regardless of whether your workers are unionized. Train managers to engage with employees in a neutral, supportive manner and avoid threatening discipline for legally protected concerted activity.

At our webinar, we will be joined by Davis Bae, Regional Managing Partner and immigration law expert at Fisher Phillips. He recently discussed, during an interview with an industry publication, how impending ICE visits would affect our suppliers across the country, and provided steps restaurants and other business owners should take to protect themselves and their employees. He highlighted that the USDA estimated in 2022 that 45% of all U.S. farmworkers are undocumented. In California, that number is closer to 50%.

More Scrutiny of Work Authorization and Visa Programs

Immigration reform was a centerpiece of the first Trump administration, and we anticipate more of the same during round two. We expect the new administration to set limits on work authorizations for F-1 students on OPT/STEM OPT and H-4 spouses, as well as humanitarian programs like Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). We also expect to see policy changes designed to limit H-2A, H-2B, H-1B, E-3, L-1, and TN work visas and increased scrutiny of work visa petitions through Requests for Evidence. These policy changes would have a significant impact on our workforce, as the restaurant industry legally hires many individuals with work authorization under these visas.

Changes to the nonimmigrant H-2A visa category, designed for agricultural workers, would have an impact on our suppliers, and changes to the nonimmigrant H-2B visa category, designed for seasonal workers, would have a direct impact on the hospitality industry. Final rules to modernize both temporary worker programs to enhance flexibility, strengthen worker protections, and improve program efficiency, became effective on January 17, 2025. These changes from the Department of Homeland Security (DHS) will positively impact the restaurant industry, in addition to many others. We are not sure what to expect from the new administration regarding these new rules.

Mandatory E-Verify+

E-Verify+ is a new government tool that aims to streamline workplace eligibility verification. As the new E-Verify+ moves from a trial to full implementation, we expect to see the federal government take steps to make its use mandatory. Of course, creating new HR solutions that properly synch with the new government portal may prove to be quite difficult. We do not recommend either way whether to use E-Verify, but for those restaurants that already use E-Verify, there are three potential benefits from moving over to the E-Verify+ system:

- It allows employees to enter their own personal information and documents.
- Workers and employers both receive direct notification of employment status.
- Verification status is carried over to new employment.

Uncertainty After Chevron Overturned

The Supreme Court's landmark ruling last year in the *Loper Bright* case gave our industry a powerful tool to fight back against regulatory overreach and will continue to have a broad impact in every area of workplace law. While the end of "Chevron deference" is largely viewed as a win for our industry, we expect to see two sides to the immigration impact on employers. On the one side, employers will have more tools to challenge federal agency regulations that make it harder to hire and retain foreign national employees. On the flipside, you may see helpful regulations tied up in litigation as well.

Conclusion

We will continue to monitor developments related to all aspects of workplace immigration law and encourage you to [register](#) for our Workplace Immigration Compliance Webinar on February 10, 2025, at 2:00pm EST (10:00am PST), for more up-to-date information. In addition, if you have questions, you will be able to ask directly our guest attorneys from Fisher Phillips. We would like to remind you that this document and the webinar are intended for informational purposes only. Nothing should be taken as legal advice nor relate to any client matter that may be considered privileged or confidential. We encourage you to contact your immigration attorney directly in confidentiality to discuss specific matters.

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We would like to thank Fisher Phillips for their assistance in drafting this document and for agreeing to participate in our upcoming webinar:



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EXAMPLE OF AN ADMINISTRATIVE WARRANT

Issued by ICE

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

No right of entry

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

Signed by an immigration officer, not a judge

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

EXAMPLE OF A JUDICIAL WARRANT

Federal Court Caption

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

The Premises Known As,

Swift & Company, located at 1700
Highway 60 NE, Worthington,
Minnesota, and all its
appurtenances, parking areas,
and outdoor working areas

Defendant.

Must state
that it is
an "Order"

CIVIL NO. 06mj457JSM
ORDER
FOR WARRANT FOR
ENTRY ON PREMISES TO
SEARCH FOR ALIENS
WHO ARE IN THE UNITED
STATES WITHOUT LEGAL
AUTHORITY

Case Number

The United States of America, having filed an application to authorize officers of United States Immigration and Customs Enforcement to enter the building on the premises described above in order to search for persons who are aliens in the United States without legal authority, together with an Affidavit and memorandum of Points and Authorities in support of the application, and the Court finding on the basis of the affidavit that there is probable cause to believe that located within the business premises described above are persons who are aliens in the United States without legal authority and subject to removal proceedings pursuant to Section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a (1996).

IT IS THEREFORE ORDERED that the officers of U.S. Immigration and Customs Enforcement are authorized to enter the building and

areas on the premises described herein and to make such search as is necessary to locate aliens present in the United States illegally and counterfeit, altered, or imposter documents possessed and/or used by the aliens who are not lawfully entitled to reside within the United States and who are employed at present within Swift, Inc. (See Attachment B). In making this search, the agents of ICE are authorized to enter any locked room on the premises in order to locate persons who may be such aliens in the United States without legal authority and, if any such persons are found on the premises, to exercise their authority pursuant to section 287 of the Immigration and Nationality Act, 8 U.S.C. § 1357, to question them to determine whether they are such aliens and, if there is probable cause to believe they are such aliens, to arrest them.

IT IS FURTHER ORDERED that U.S. Immigration and Customs Enforcement shall conduct the entry and search during daylight hours with ten (10) days of the issuance of this warrant, and make its return to this Court with ten (10) days of the date the entry and search have been completed.

Dated: December 8, 2006

Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

Must be signed
by a judge

ATTACHMENT A

LOCATION OF PROPERTY TO BE SEARCHED

The entire premises and vehicles within the cartilage located at Swift & Company, located at 1700 Highway 60 NE, Worthington, Minnesota, further described as:

Parcel Number 31-3787-000 and Parcel Number 31-3790-000 in the county of Nobles, in the state of Minnesota. A commercial industrial meat processing plant with one main building and several out buildings on the property.

Directly to the north of the facility is Interstate 90 and to the west of the facility is Highway 60. The facility has one main vehicle gate. A chain link fence surrounds the facility on three sides with barbed wire on top. Security personnel housed in an access control booth man the main gate.

Must describe the residence to be searched and/or the person to be arrested (either by name or by description).

ATTACHMENT B

DESCRIPTION OF ITEMS TO BE SEARCHED FOR

1. Aliens who are not lawfully entitled to reside within the United States who are employed at present within Swift & Company; and
2. Counterfeit, altered or imposter documents possesses and/or used by the aliens who are not lawfully entitled to reside within the United States and who are employed at present within Swift & Company.