

1515 Clay Street, Ste. 401
Oakland, CA 94612
Tel: (510) 285-2119 Fax: (510) 285-1365

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603

**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

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.¹ *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

¹ 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.
- 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 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.

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

- Staff are reminded that the Labor Commissioner’s Office does not ask about or collect information about a worker’s immigration status when wage claims are filed or when making determinations about whether labor laws have been violated.
- 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.

SPECIFIC PROCEDURES

PART 1: Notice of Who May Enter Our Office

- At each district office of the Labor Commissioner, notices have been posted (including by the entryway to the waiting room and inside the waiting room and inner offices) that indicate who is permitted to enter our offices. The notice states:

Only individuals seeking assistance or information from the Labor Commissioner about state labor laws, or those filing or involved in a claim or investigation before our agency (including parties, witnesses, representatives, family members, or persons assisting an individual with a claim), may enter this office. Soliciting is prohibited. Any person whose presence would interfere with agency proceedings is not permitted to enter this office.

PART 2: General Office Space Precautions

- All doors to hearing rooms, conference rooms or inner offices that lead to an outer hallway should be closed and locked (when possible) to prevent unsupervised access from the outer hallway.
- District offices with hearing rooms or conference rooms that have glass walls or windows facing an outer hallway should take appropriate steps, where feasible, so that participants in these rooms are not readily visible from the outer hallway.
- When speaking with an immigration agent, staff **should not voluntarily** open any door (in the waiting room or elsewhere) that leads to the inner office suite; office doors that are generally locked or shut should not be voluntarily opened for the agent. (See also Part 10, “What to Do if Agent Refuses to Leave,” below.)
- **Sign-in sheets should not be posted for public view.** For example, any sign-in sheet should be kept behind the window at the front counter, for use only by our staff; staff may indicate on the sheet when a party has arrived and should not hand over the sheet to any person who arrives at the front counter.

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

- Wage Seniors should work with Regional Managers to determine whether, depending on the particular office (including its size and physical configuration), there are **additional procedures** that make sense for the office to implement as a general matter, in order to effectuate the spirit of this policy (including not enabling unscrupulous employers to engage in or benefit from unlawful retaliation against a worker). Such procedures could include:
 - **Calling all cases by an assigned number or numbers instead of by party names.** Claimants, witnesses, and defendants in a particular case could be assigned the same number or different numbers. Examples include: “Calling all parties for Case #1” [employer, claimant, and witnesses are all assigned #1]; or “Calling #1, #2, and #3” [claimant is assigned #1, labor contractor is assigned #2, and client employer is assigned #3].
 - When parties arrive for a scheduled proceeding, **having the employer and the worker wait in separate rooms**, including using a room designated in the inner office suite for claimants and their witnesses, until the proceeding starts.

**PART 3:
General Guidelines for Interaction with Agent**

- Always be polite but firm.
- Never physically interfere with a federal immigration agent, even if the agent does not have a lawful basis to enter and remain in our offices.
- As much as possible, conduct all communication with the agent through the window at the front counter.
- Always act within your level of comfort and safety.
- Whenever possible, try to make sure that more than one staff person is present during all interactions with an agent.

**PART 4:
Who Should Communicate with
Agent at the Front Counter**

- If a federal immigration agent enters our office, **counter staff should inform the agent that our policy is to have a Labor Commissioner Attorney or Senior Deputy speak with the agent.** Staff should ask the agent to wait for the Attorney or Senior to come to the front desk and should try not to engage in any further conversation with the agent. (See Script #1, “What to Say to a Federal Immigration Agent/ Counter Staff.”)
- Counter staff should immediately contact **both** the Attorney (if present) and a Senior Deputy (or his or her designee if the Senior is out) to come to the counter.
- As much as possible, all communication with the agent should be made by the Attorney (if present) or the Senior Deputy if the Attorney is not present. (See Script #2, “What to Say to a Federal Immigration Agent/ Attorney or Senior Deputy.”)
- If the agent will not wait for the Attorney or Senior, counter staff may need to speak with the agent. (See Script #1, “What to Say to a Federal Immigration Agent/ Counter Staff.”)

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

- Whenever possible, a “buddy” system should be instituted so staff are not interacting with the agent alone. Ideally, at least two staff should be present (this could be some combination of the Attorney, Senior, and counter staff), although the Attorney or the Senior should communicate with the agent.

**PART 5:
Who Should Communicate with Agent
Attempting to Enter as Case is Being Called**

- If the agent does not approach the front counter but tries to enter our office when a Hearing Officer or Conference Deputy calls the parties for a hearing or conference:
 - The Hearing Officer or Conference Deputy should ask all parties (and witnesses or representatives) who are participating in the proceeding to enter first, and ask the agent to wait and not to enter with the parties. The agent should be informed that ***our policy is to have either a Labor Commissioner Attorney or Senior Deputy speak with the agent.*** (See Script #3, “What to Say to a Federal Immigration Agent/ Hearing Officer or Conference Deputy.”)
 - If the situation allows, the Hearing Officer or Conference Deputy should seek the assistance of an Attorney (if present) or Senior to communicate with the agent. However, the Hearing Officer or Conference Deputy may need to speak with the agent. (See Script #3, “What to Say to a Federal Immigration Agent/ Hearing Officer or Conference Deputy.”)

**PART 6:
Background Information from the Agent**

- If the situation permits, staff who end up speaking with the agent should inform the agent that the Labor Commissioner would like some background information in order to understand why the agent is in our offices. When possible, the agent should be asked the following questions (see Scripts #1-3):
 - What is the agent’s name, agency, and badge number (or business card with this information).
 - Why the agent is there.
 - Was the agent contacted by someone to come to our office that day, and if so, who contacted the agent, and when.
- These questions are not intended to take up time, and staff should move through them as quickly as possible.
- In the event the agent refuses to answer these questions, staff should not persist in asking the questions and should not become confrontational.
- Staff should make sure to document all answers.

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

**PART 7:
Not Consenting to Entry or Search**

- Staff ***should not voluntarily*** permit a federal immigration agent to enter **any part of our office**. This 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***.
- Thus, if an agent enters or seeks to enter any part of our office, including the waiting room, staff should inform the agent:
 - The Labor Commissioner's Office is a state law enforcement agency that investigates and prosecutes labor law violations.
 - The agent's presence is interfering with our ability to enforce state labor laws.
 - It is the Labor Commissioner's general policy not to permit such interference with our state law enforcement duties. (See Scripts #1-3.)
- **Staff should then immediately ask the agent to leave our office, including the waiting room. Staff should state that the Labor Commissioner does not consent to the agent's entry or search of any part of our office.** (See Scripts #1-3.)

**PART 8:
Asking for a Judicial Search Warrant**

- In the best case scenario, the immigration agent will leave upon the initial verbal request to leave our office (as set forth above).
- However, if the agent refuses to leave (including a refusal to leave the waiting room), staff should ask if the agent has a **search warrant signed by a judge** that allows the agent to enter and search our offices. (See Scripts #1-3.)
- If the agent states that he or she does not have a warrant of any kind, staff should once again **ask the agent to leave our office, including the waiting room. Staff should state that the Labor Commissioner does not consent to the agent's entry or search of any part of our office.** (See Scripts #1-3.)

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

**PART 9:
If the Agent Presents a Warrant**

- If the agent states that he or she actually has a warrant of some kind, staff should:
 - Inform the agent that the Labor Commissioner’s policy is to have a designated Attorney take a look at the warrant. (See Scripts #1-3.)

 - Our designated Attorneys who are available to review warrants are as follows:

Christina Chung (cchung@dir.ca.gov) (510-418-0833)
Julia Figueira-McDonough (jfigueira-mcdonough@dir.ca.gov) (213-248-9340)
Fernando Flores (fflores@dir.ca.gov) (415-961-3369)
Jessica Fry (jfry@dir.ca.gov) (408-234-5340)
Deborah Graves (dgraves@dir.ca.gov) (619-778-6785)
Dave Gurley (dgurley@dir.ca.gov) (562-590-5461 or 213-216-7078)
Bart Jacka (bjacka@dir.ca.gov) (916-274-6361)
Phoebe Liu (pliu@dir.ca.gov) (213-576-7711)
Colleen Ryan (cryan@dir.ca.gov) (510-622-4590 or 415-638-0621)
Sotivear Sim (ssim@dir.ca.gov) (562-619-6142)

- If one of the designated Attorneys is present in the office at the time the agent arrives with a warrant, the Attorney should be immediately contacted to meet the agent and take a look at the warrant.
- If a designated Attorney is not present, staff should ask the agent for a copy of the warrant. (See Scripts #1-3.)
 - If a copy is provided, the agent should be informed that one of our designated Attorneys will review the warrant. (See Scripts #1-3.) **Scan and email a copy of the warrant to all of the designated Attorneys, with the subject line “URGENT – WARRANT.” In the email, include a phone number where you can be immediately reached.** One of the designated Attorneys will respond as quickly as possible, with any further instructions.
 - If for any reason staff are unable to email a copy of the warrant to the designated Attorneys, the agent should be informed that a designated Attorney will need to be contacted on the phone to discuss. (See Scripts #1-3.) **Call one of the designated Attorneys** to review the warrant verbally over the phone. One of the designated Attorneys should be available to take the call, and provide any further instructions.

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

**PART 10:
What to Do if Agent Refuses to Leave**

- 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, including a demand to open a closed or locked door (even when the agent does not have a warrant or give us time to review one). **But at the same time, staff should clearly state to the agent that consent to enter or search our office is NOT being given.** For example, staff could state, "You are using force, so I will open this door because I do not have a choice. I am not consenting to your entry or search." (See Scripts #1-3.)
- **In all situations, staff should never physically interfere with the agent.** This includes never physically interfering with an agent who refuses to leave our office. If the agent will not leave, even though he or she does not have a warrant, staff should repeat that **consent to enter or search our office is NOT being given.** For example, staff could state, "You are refusing to leave our office even though you do not have a warrant and I have asked that you please leave. I am not consenting to your entry or search or your presence here." (See Scripts #1-3.)
- When the situation permits, staff may also seek the assistance of a **designated Attorney** (see Part 9, above, for the list of designated Attorneys). Staff may contact one of the designated Attorneys to talk with the agent (either in person, if a designated Attorney is in the office, or on the phone). (See Scripts #1-3.)

**PART 11:
Informing the Worker**

- When the situation permits, the worker who is the subject of the agent's inquiry should be informed of the incident:
 - At an appropriate time, the **Deputy assigned to the claim or hearing that day** (e.g., Conference Deputy, Hearing Officer, BOFE Deputy) **should be informed that a federal immigration agent has shown up looking for the worker**, if the Deputy does not already know. Conferences and hearings should not be interrupted, except as necessary if the agent has gained entry to our inner offices without our consent.
 - The **Deputy assigned to the claim, or a Deputy assigned by a Senior, should in turn inform the worker of the following**, calmly and as a factual matter –
 - A federal immigration agent has come to our office and stated that he or she is looking for the worker; the Labor Commissioner's Office does not voluntarily let immigration agents into our office; the Labor Commissioner's Office does not work with federal immigration enforcement, and we enforce state labor laws regardless of immigration status; the worker's immigration status is irrelevant in our proceedings to determine an employer's liability; and we would like to proceed with the case or investigation against the employer. (Immigration or legal advice should not be

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

given.) (See Script #4, “How to Inform a Worker If a Federal Immigration Agent Comes to Our Office.”)

- When proceedings are ongoing, the worker should also be informed that he or she may appear remotely for any future proceedings. (See Script #4, “How to Inform a Worker If a Federal Immigration Agent Comes to Our Office.”) (See also Part 15, “Handling Ongoing Proceedings,” below.)
 - Informing the Deputy and worker about the foregoing is essential to ensure the least amount of disruption to our work as possible, and facilitate our ability to assist the worker with any potential retaliation complaint against the employer. (See Part 12, “Assisting with Retaliation Complaint; CIU Referral,” below.)
 - The Deputy should inform the worker at an appropriate time, depending on the circumstances. If the worker is present in our office, the worker should be informed in person, as the situation permits. If the worker does not appear for the scheduled proceeding, the Deputy should make reasonable efforts to call the worker within 24 hours of the incident to inform the worker.
- The worker should also be provided with a copy of the Immigration Legal Resources list that was distributed with the May 2017 staff memo, “Protocols to address immigration-related threats and retaliation by employers.” The Resources List should be provided at the earliest possible opportunity in person if the worker is in our office, or mailed within 24 hours of speaking with the worker on the phone.

<p>PART 12: Assisting with Retaliation Complaint; CIU Referral</p>

- When the situation permits, the possibility of filing a retaliation complaint should be discussed with the worker:
 - The Deputy assigned to handle the claim or a Deputy assigned by a Senior should speak with the worker about whether the worker had previously been threatened by the employer, including any threat to “call immigration” on the worker, and any details the worker can relate about any such threat (e.g., who made it, when it was made, what exactly was said, was the threat made in person or over the phone, etc.).
 - The appropriate time to speak with the worker will depend on the circumstances. If the worker is present in our office, this conversation should take place in person, as the situation permits. If the worker does not appear for the scheduled proceeding, the Deputy should make reasonable efforts to call the worker within 24 hours of the incident to discuss this.
- If the worker states that a threat was made by his or her employer, staff should follow the protocols for initiating an RCI investigation and referring the case to CIU, as set forth in the May 2017 staff memo, “Protocols to address immigration-related threats and retaliation by employers.”
- When the worker does not report a previous threat made by the employer, staff would still document the fact that an immigration agent came to our office (see Part 14, “Documenting What Happened,” below). Based on this fact and any other relevant information, a determination will be made as to whether RCI or CIU should be involved.

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

**PART 13:
Responding to Questions from Agent**

- The following information should **not** be provided to a federal immigration agent who is attempting to enter our offices in search of a worker (or to an agent who **calls** seeking this information):
 - 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;
 - 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).
- If asked by the agent about the foregoing, staff should inform the agent that **you are unable to provide that information**. If the agent keeps asking for this information or why it will not be provided, or any other questions about this information, you should repeat that you are unable to provide that information – and should the agent wish to speak with someone else, the agent may leave his or her name and phone number (if not already given to us). (See [Scripts #1-3.](#))
- Staff should document this interaction, including any contact information for the agent that is provided. (See Part 14, “Documenting What Happened,” below).

**PART 14:
Documenting What Happened**

- Staff should immediately document all interactions with federal immigration agents who show up at our offices. This would include documenting all actions taken and statements made by the agent. The [“Federal Immigration Agent Incident Report”](#) (attached) should be filled out.
- Staff should remember to note on the “Federal Immigration Agent Incident Report” whether you stated that you were not consenting to the agent’s entry and search of our office.
- The completed “Federal Immigration Agent Incident Report” should be emailed immediately to Mary Ramirez (mramirez@dir.ca.gov), and copied to the Labor Commissioner (jsu@dir.ca.gov) and Special Counsel (cchung@dir.ca.gov).
- Hearing Officers should note for the record if a federal immigration agent gained entry to the hearing room without our consent.

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

PART 15: Handling Ongoing Proceedings
--

- If an immigration agent comes to our office in search of a worker, or calls our office about a worker's case:
 - Deputies should not close the worker's case if the worker does not show up for a scheduled proceeding. Per the procedures above under Part 11 ("Informing the Worker") and Part 12 ("Assisting with Retaliation Complaint; CIU Referral"), reasonable efforts should be made to call the worker within 24 hours of the incident.
 - Any conference or hearing should be continued as necessary and appropriate.
 - The worker (either the claimant or a witness) who was the subject of the federal agent's inquiry should be given the option to appear remotely at any conference or hearing that may later take place. Such a procedure would help make it more possible for a worker to continue to participate in our law enforcement efforts rather than drop out due to an employer's unlawful retaliation, may head off the employer's ability to retaliate further against the worker, and would ensure the least disruption to our proceedings.
 - The employer should appear at the originally noticed office location before the Conference Deputy or Hearing Officer.
 - The worker should be allowed to phone in or make a video appearance from an alternate location that is not disclosed to the employer. Seniors (for Wage, BOFE, or PW, depending on the case) should work with their Deputies to coordinate an alternate location for the worker to appear (e.g., at another Labor Commissioner office or an office of a sister state agency), as well as make arrangements for staff to be available at the alternate location to facilitate the worker's remote appearance and any scanning/faxing that may be necessary. (Because PW hearings are generally not heard by our Hearing Officers, this will need to be addressed case by case with ODL.)
 - Where a hearing is involved, the Hearing Officer should note for the record why the worker is appearing from an alternate location.

COUNTER STAFF

**WHEN A FEDERAL IMMIGRATION AGENT FIRST ENTERS OUR OFFICE
(THIS INCLUDES ANY WAITING ROOM)**

➔ If you are not an Attorney or Senior Deputy, then say:

“The Labor Commissioner’s policy is to have one of our Attorneys or Senior Deputies speak with you. Please wait while I ask the appropriate person to come speak with you.”

If the agent agrees to wait, then all further communications with the agent should be made by the Attorney or Senior. If the agent won’t wait, the rest of this script applies.

IF THE AGENT WILL NOT WAIT FOR AN ATTORNEY OR SENIOR

➔ When the situation permits, you should say and ask (if the agent has not already informed you of the following):

“It would help to get some background information from you.”

- **“What is your name?”**
- **“What agency do you work for?”**
- **“Do you have a business card?”**
- **“May I see your badge?”** *[Look for a badge number.]*
- **“Could you inform me why you are here today?”**
- **“Did someone contact you to come to our office today?”**

[If the answer is YES]

“Could you tell me who contacted you?”

“When were you contacted?”

[Write down all answers. These questions are meant to be quick. If the agent won’t answer, that’s fine. Move on as quickly as possible.]

IMMEDIATELY ASK THE AGENT TO LEAVE

➔ After any background information you can quickly get from the agent, you should say:

“The Labor Commissioner’s Office is a state law enforcement agency that investigates and prosecutes labor law violations. Your presence is interfering with our ability to enforce state labor laws. It is the Labor Commissioner’s general policy not to permit such interference with our state law enforcement duties.”

“Would you please leave our office? The Labor Commissioner does not consent to your entry or search of any part of our office.”

IF THE AGENT DOES NOT LEAVE UPON YOUR INITIAL VERBAL REQUEST

 You should say:

“Do you have a search warrant signed by a judge that allows you to enter and search our office?”

IF THE AGENT SAYS HE OR SHE DOES NOT HAVE A WARRANT OF ANY KIND

 You should say:

“I have to ask you again to please leave our office. You do not have a warrant. The Labor Commissioner does not consent to your entry or search of any part of our office.”

IF THE AGENT SHOWS SOME KIND OF WARRANT

 You should say:

“It is the Labor Commissioner’s policy to have a designated attorney take a look at this.”

[If designated attorney is there in your office]

“Please wait while I contact that attorney. We will need a moment to look at this.”

[If designated attorney is not present]

“May I have a copy of the warrant?”

[If a copy is provided]

“Thank you. Please wait while I send a copy to the attorney. We will need a moment to look at this.” *[Scan and email to designated attorneys, who will provide any further instructions. Include your phone number in the email.]*

[If a copy is NOT provided]

“May I look at the warrant, even if you will not give me a copy? I am going to call the attorney to discuss what you are showing me. I will need a moment to do this.” *[Call any of the designated attorneys until you reach someone. Any further instructions will be provided by that attorney.]*

IF THE AGENT REFUSES TO LEAVE AND DEMANDS ENTRY (EVEN WITHOUT A WARRANT OR TIME TO REVIEW ANY WARRANT), AND THREATENS STAFF IN ANY WAY

Never physically interfere with an agent. State clearly that you are not providing consent to the agent's entry or search of our office. Exactly what you say will depend on the situation.

 EXAMPLES of what you could say:

"You are scaring me so I will open this door because I do not have a choice. I am not consenting to your entry or search."

"You are using force, so I will open this door because I do not have a choice. I am not consenting to your entry or search."

"You are refusing to leave our office even though you do not have a warrant and I have asked that you please leave. I am not consenting to your entry or search or your presence here."

"Excuse me, but you are forcing your way into our office even though you are interfering with our proceedings. I am not consenting to your entry or search."

"You are saying you have a warrant that allows you to be here but you are not giving the Labor Commissioner's Office a chance to look at it. You are demanding that I open this door right now. I'm opening it because I feel forced to. I am not consenting to your entry or search."

When the situation permits, you may also seek the assistance of a designated attorney (to speak with the agent in person or by phone).

 You could say:

"If you would wait a moment, I can check if another representative from my office can speak with you right now [if you would give me your name and phone number]."

IF THE AGENT ASKS FOR INFORMATION ABOUT A WORKER'S LOCATION OR CASE

If the agent asks for any of the following information (either in person or by calling):

- *Whether a particular worker is 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;*
- *A worker's address or phone number;*
- *Any upcoming conference or hearing date on a worker's claim;*
- *Whether a worker even has a claim before us or is participating in a proceeding before us, including the status of any case or investigation*



You should say:

"I am unable to give you that information."



If the agent keeps asking you for the information or why you cannot provide it, you should say:

"I am unable to give you that information. If you would like to speak with someone else about this, [and you provide your name and phone number], I can check if another representative from the Labor Commissioner's Office can call you."

ATTORNEY or SENIOR DEPUTY**WHEN A FEDERAL IMMIGRATION AGENT FIRST ENTERS OUR OFFICE
(THIS INCLUDES ANY WAITING ROOM):**

➔ When the situation permits, you should say and ask (if the agent has not already informed you of the following):

“I am [an Attorney/ a Senior Deputy] for the Labor Commissioner. It would help to get some background information from you.”

- **“What is your name?”**
- **“What agency do you work for?”**
- **“Do you have a business card?”**
- **“May I see your badge?”** *[Look for a badge number.]*
- **“Could you inform me why you are here today?”**
- **“Did someone contact you to come to our office today?”**

[If the answer is YES]

“Could you tell me who contacted you?”

“When were you contacted?”

[Write down all answers. These questions are meant to be quick. If the agent won't answer, that's fine. Move on as quickly as possible.]

IMMEDIATELY ASK THE AGENT TO LEAVE

➔ After any background information you can quickly get from the agent, you should say:

“The Labor Commissioner’s Office is a state law enforcement agency that investigates and prosecutes labor law violations. Your presence is interfering with our ability to enforce state labor laws. It is the Labor Commissioner’s general policy not to permit such interference with our state law enforcement duties.”

“Would you please leave our office? The Labor Commissioner does not consent to your entry or search of any part of our office.”

IF THE AGENT DOES NOT LEAVE UPON YOUR INITIAL VERBAL REQUEST

 You should say:

“Do you have a search warrant signed by a judge that allows you to enter and search our office?”

IF THE AGENT SAYS HE OR SHE DOES NOT HAVE A WARRANT OF ANY KIND

 You should say:

“I have to ask you again to please leave our office. You do not have a warrant. The Labor Commissioner does not consent to your entry or search of any part of our office.”

IF THE AGENT SHOWS SOME KIND OF WARRANT

 You should say:

“It is the Labor Commissioner’s policy to have a designated attorney take a look at this.”

[If designated attorney is there in your office]

“Please wait while I contact that attorney. We will need a moment to look at this.”

[If designated attorney is not present]

“May I have a copy of the warrant?”

[If a copy is provided]

“Thank you. Please wait while I send a copy to the attorney. We will need a moment to look at this.” *[Scan and email to designated attorneys, who will provide any further instructions. Include your phone number in the email.]*

[If a copy is NOT provided]

“May I look at the warrant, even if you will not give me a copy? I am going to call the attorney to discuss what you are showing me. I will need a moment to do this.” *[Call any of the designated attorneys until you reach someone. Any further instructions will be provided by that attorney.]*

IF THE AGENT REFUSES TO LEAVE AND DEMANDS ENTRY (EVEN WITHOUT A WARRANT OR TIME TO REVIEW ANY WARRANT), AND THREATENS STAFF IN ANY WAY

Never physically interfere with an agent. State clearly that you are not providing consent to the agent's entry or search of our office. Exactly what you say will depend on the situation.

 EXAMPLES of what you could say:

“You are scaring me, so I will open this door [move aside] because I do not have a choice. I am not consenting to your entry or search.”

“You are using force, so I will open this door [move aside] because I do not have a choice. I am not consenting to your entry or search.”

“You are refusing to leave our office even though you do not have a warrant and I have asked that you please leave. I am not consenting to your entry or search or your presence here.”

“Excuse me, but you are forcing your way into our office even though you are interfering with our proceedings. I am not consenting to your entry or search.”

“You are saying you have a warrant that allows you to be here but you are not giving the Labor Commissioner's Office a chance to look at it. You are demanding that I open this door right now. I'm opening it because I feel forced to. I am not consenting to your entry or search.”

When the situation permits, you may also seek the assistance of a designated attorney (to speak with the agent in person or by phone).

 You could say:

“If you would wait a moment, I can check if another representative from my office can speak with you right now [if you would give me your name and phone number].”

IF THE AGENT ASKS FOR INFORMATION ABOUT A WORKER'S LOCATION OR CASE

If the agent asks for any of the following information (either in person or by calling):

- *Whether a particular worker is 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;*
- *A worker's address or phone number;*
- *Any upcoming conference or hearing date on a worker's claim;*
- *Whether a worker even has a claim before us or is participating in a proceeding before us, including the status of any case or investigation*



You should say:

"I am unable to give you that information."



If the agent keeps asking you for the information or why you cannot provide it, you should say:

"I am unable to give you that information. If you would like to speak with someone else about this, [and you provide your name and phone number], I can check if another representative from the Labor Commissioner's Office can call you."

HEARING OFFICER or CONFERENCE DEPUTY**WHEN A FEDERAL IMMIGRATION AGENT ATTEMPTS TO ENTER OUR OFFICE AS YOU ARE CALLING A CASE**

➔ You should say:

“Excuse me, but you are not a party or other individual involved in this case. I am asking parties [and their witnesses and representatives] to come in, but I am asking you not to enter. The Labor Commissioner’s policy is to have one of our Attorneys or Senior Deputies speak with you. Please wait while we contact the appropriate person to come speak with you.”

If the agent agrees to wait, then all further communications with the agent should be made by the Attorney or Senior. If the agent won’t wait, the rest of this script applies.

IF THE AGENT WILL NOT WAIT FOR AN ATTORNEY OR SENIOR BUT THE AGENT STOPS TO TALK WITH YOU

➔ When the situation permits, you should say and ask (if the agent has not already informed you of the following):

“It would help to get some background information from you.”

- **“What is your name?”**
- **“What agency do you work for?”**
- **“Do you have a business card?”**
- **“Could you inform me why you are here today?”**
- **“Did someone contact you to come to our office today?”**

[If the answer is YES]

“Could you tell me who contacted you?”

“When were you contacted?”

[These questions are meant to be quick. If the agent won’t answer, that’s fine. Move on as quickly as possible.]

IMMEDIATELY ASK THE AGENT TO LEAVE

➔ After any background information you can quickly get from the agent, you should say:

“The Labor Commissioner’s Office is a state law enforcement agency that investigates and prosecutes labor law violations. Your presence is interfering with our ability to

enforce state labor laws. It is the Labor Commissioner's general policy not to permit such interference with our state law enforcement duties."

"The Labor Commissioner does not consent to your entry or search of any part of our office. Would you please leave?"

IF THE AGENT DOES NOT LEAVE UPON YOUR INITIAL VERBAL REQUEST

 You should say:

"Do you have a search warrant signed by a judge that allows you to enter and search our office?"

IF THE AGENT SAYS HE OR SHE DOES NOT HAVE A WARRANT OF ANY KIND

 You should say:

"I have to ask you again to please leave our office. You do not have a warrant. The Labor Commissioner does not consent to your entry or search of any part of our office."

IF THE AGENT SHOWS SOME KIND OF WARRANT

 You should say:

"It is the Labor Commissioner's policy to have a designated attorney take a look at this."

[If designated attorney is there in your office]

"Please wait while I contact that attorney. We will need a moment to look at this."

[If designated attorney is not present]

"May I have a copy of the warrant?"

[If a copy is provided]

"Thank you. Please wait while my office sends a copy to the attorney. We will need a moment to look at this." *[Scan and email to designated attorneys, who will provide any further instructions. In the email, include the phone number of the staff person who will be available to receive further instructions from the attorney.]*

[If a copy is NOT provided]

"May I look at the warrant, even if you will not give me a copy? My office is going to call the attorney to discuss what you are showing me. We will need a

moment to do this.” *[The list of designated attorneys should be called until one is reached. Any further instructions will be provided by that attorney.]*

IF THE AGENT REFUSES TO LEAVE AND DEMANDS ENTRY (EVEN WITHOUT A WARRANT OR TIME TO REVIEW ANY WARRANT), AND THREATENS STAFF IN ANY WAY

Never physically interfere with an agent. State clearly that you are not providing consent to the agent’s entry or search of our office. Exactly what you say will depend on the situation.

 EXAMPLES of what you could say:

“You are scaring me, so I will open this door [move aside] because I do not have a choice. I am not consenting to your entry or search.”

“Excuse me, but you are forcing your way into our office even though you are interfering with our proceedings and I am only allowing the parties to enter [to be present here]. I am not consenting to your entry or search.”

“You are refusing to leave our office even though you do not have a warrant and I have asked that you please leave. I am not consenting to your entry or search or your presence here.”

“You are saying you have a warrant that allows you to enter this office but you are not giving the Labor Commissioner’s Office a chance to look at the warrant. You are demanding that I open this door [move aside]. I’m opening it [moving aside] because I feel forced to. I am not consenting to your entry or search.”

When the situation permits, you may also seek the assistance of a designated attorney (to speak with the agent in person or by phone).

 You could say:

“If you would wait a moment, I can check if another representative from my office can speak with you right now [if you would give me your name and phone number].”

IF THE AGENT ASKS FOR INFORMATION ABOUT A WORKER'S LOCATION OR CASE

If the agent asks for any of the following information (either in person or by calling):

- *Whether a particular worker is 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;*
- *A worker's address or phone number;*
- *Any upcoming conference or hearing date on a worker's claim;*
- *Whether a worker even has a claim before us or is participating in a proceeding before us, including the status of any case or investigation*



You should say:

"I am unable to give you that information."



If the agent keeps asking you for the information or why you cannot provide it, you should say:

"I am unable to give you that information. If you would like to speak with someone else about this, [and you provide your name and phone number], I can check if another representative from the Labor Commissioner's Office can call you."

SCRIPT #4

How to Inform a Worker If a Federal Immigration Agent Comes to Our Office

A worker should be informed as a factual matter if an agent has come to our office looking for the worker. This is necessary to ensure the least amount of disruption to our enforcement activities as possible. Informing the worker also facilitates our ability to assist the worker with any potential retaliation claim against the employer.

The Deputy assigned to the claim or hearing involving the worker, or a Deputy assigned by the Senior, should let the worker know what happened. Exactly what the Deputy says will depend on the situation.



EXAMPLE of what to say to the worker:

“I wanted to inform you that a person identifying himself/herself as a federal immigration agent [ICE agent] came to our office _____ (state approximate time of incident, e.g., “today at about 1:30 p.m.”).

“The agent stated that he/she was looking for you. I am just letting you know this happened. The Labor Commissioner’s Office does not voluntarily let immigration agents [ICE] into our office. We do not work with federal immigration enforcement. Our job is to enforce state labor laws regardless of immigration status. Your immigration status is irrelevant in the work we do to determine if an employer has violated labor laws. We have no actual knowledge of your immigration status and we are not asking about it.”

“I can’t give you legal advice, but we do have a list of legal resources outside our agency in case you would like to contact an immigration attorney for any reason.”

“The Labor Commissioner’s Office would like to proceed with your case against your employer. To help with this, for the next conference/hearing that we schedule, we can make arrangements for you to come to another location (and not this office) – which we will not disclose to your employer. We will set this up and let you know.”