



KPB Immigration Law Firm

San Francisco (415) 777-4445

Los Angeles (323) 782-3877

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Article: **PROTECTIONS FOR IMMIGRANTS IN THE WORKPLACE: AB 450**

By: Christopher A. Kerosky, Esq

Our state has recently seen an increase in ICE arrests at immigrants' homes or at schools, courts and other public places. It is quite possible that worksite raids are next.

Last year, in an effort to provide some protection to immigrants, the California legislature passed "The Immigrant Worker Protection Act", known as AB 450, which was signed by the Governor and took effect in January. The law imposes various prohibitions and requirements on employers with regard to worksite inspections by immigration enforcement agents. It applies to all California private and public employers.

What is AB 450?

AB 450 sets forth certain limits on what an employer can do if ICE seeks to enter an employer's place of business or requests employee records.

The law dictates that both public and private employers and their representatives are prohibited from allowing immigration officials to enter nonpublic areas of a place of labor without a warrant.

A "nonpublic" area is one that the general public is not normally free to access. For example, this could be a kitchen in a restaurant or an office personnel records are kept, or any area that an employer designates as restricted to employees or management of the business. A "public" area of a place of labor is an area that the general public is normally free to enter – such as the dining room of a restaurant or the sales floor of a store during business hours.

What is considered "voluntary access" is based on the totality of the circumstances. The fact is that – even before AB 450-- immigration officials are not allowed to enter non-public areas of a business without the permission of the owner or proprietor. So a clear refusal by the employer should keep ICE out of these areas; California law now requires this from employers.

Access to Records.

The new law provides that employers cannot voluntarily give access to an ICE agent to an employer's employee records without a subpoena or warrant. This does not apply to I-9s or other documents under Employment Verification laws.

AB 450 also imposes notice to employees from the employer if ICE is carrying out an inspection of I-9s or other employment records. Employers are required to post information about any inspections of I-9 forms or other employment records conducted by ICE within 72 hours of receiving notice of the inspection.

AB 450 also prohibits employers from reverifying employment eligibility of any current employee unless required by federal immigration law.

California would be greatly impacted by a policy shift toward workplace raids—something that has not happened regularly in 10 years. It is estimated that over 2.6 million undocumented immigrants reside in California. Undocumented workers make up 45% of California's agricultural workforce and 21 % of the construction industry here. As a whole, almost 1 in every 10 workers in California is undocumented

AB450 is the state's attempt to set clear guidelines on what employer's can and should do when immigration agents show up at the workplace for the protection of this important labor force.

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About the author:

Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

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