



Agenda

DATE 4/4/18 TIME 2:19P
SERVED BY Chris Sanchez
RECEIVED BY SSSSSS

IMMIGRATION COMMITTEE MEETING

Tuesday, April 10, 2018
Market Station
Caboose Room
500 Market Station
4:30 p.m.-6:00 p.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes: February 13, 2018
4. Community Comments
5. New Business/Action Items:
 - a. Update from City of Santa Fe Human Resources Trainer
 - b. Update on I-9 audits
 - c. Update on increase enforcement activities in Santa Fe
 - d. Update on state wage enforcement
 - e. Update on written statement submitted by R.V.
 - f. Update on U-Visas
 - g. Update on suggested training with SFPD
 - h. Update on bi-lingual incentives
 - i. Update on response regarding language access and securing services of an independent contractor to assess language barriers and needs.
6. Old Business:
 - a. Subcommittee Updates:
 - Welcoming Communities
 - Education
 - Social Media & Communications
 - Refugee Resettlement
 - Police Department
7. Comments from the Chair and Committee Members
8. Report from Staff
9. Adjournment

Persons with disabilities in need of accommodations, please contact the City Clerk's office at (505) 955-6521 five (5) working days prior to the meeting date.

IMMIGRATION COMMITTEE

Tuesday, April 10, 2018

4:30 pm –6:02 pm

MINUTES

1. Call to Order

Chair Alejandra Seluja, called the meeting to order for the Immigration Committee at 4:30 pm at the City of Santa Fe Caboose Room, Market Station. Roll call reflects a quorum.

PRESENT:

Alejandra Seluja, Chair
Maria Cristina Lopez
Jewel Cabeza de Vaca
Susan Hayre
Amparo Guerrero
Marcela Diaz
Javier Rios

NOT PRESENT:

Elizabeth Hemmer

STAFF/OTHERS PRESENT:

Victor Vigil, Community Services Staff
Aaron Martinez, Community Services Staff
Judah Montano, SFPD
Ivan Cornejo, Capital High Schools
Gail Herling, SFPS Adelante Program
Aaron, Santa Fe Reporter
Fran Lucero, Stenographer

2. Approval of Agenda

Ms. Jewel Cabeza de Vaca moved to approve the agenda as presented, second by Maria Cristina Lopez, motion carried by unanimous voice vote.

3. Approval of Minutes: February 13, 2018.

Corrections:

Page 3 – exit post polls

2nd line: posts – should be posters

Page 8 – monolingual *Spanish* speaking students

Maria Cristina Lopez moved to approve the minutes of February 13, 2018 as amended, second by Ms. Hayre, motion carried by unanimous voice vote.

4. Community Comments

None

5. New Business/Action Items

a. Update from City of Santa Fe Human Resources Trainer

Mr. Aaron Martinez: Information was provided at a previous meeting of the Immigration Committee on training that is done in the city. 2017-19 Resolution passed and the only adjustment made to the training was adding an additional slide, which is verbatim; it is a directive from the City Manager and it was sent to every city employee. Mr. Martinez read the addition in to the record and he re-confirmed that they were already training on this slide. Mr. Martinez said that what they are telling new employees during training since the old employees have already been trained and they received this Resolution, that employees are directed if any official comes in, they have to direct those people to the Legal Department. This Resolution reinforced what they are already training city employees on. In the event that any Federal Immigration Agent or representative from a Federal Agency approaches you regarding any immigration information, you are to direct the agent or agency representative to the City of Santa Fe Legal Office. Every employee has received this directive and new employees receive this as part of their training. That is the only update that they have at this point.

Ms. Lopez asked if they give training to new police.

Mr. Martinez said no, it all depends if they are coming in as laterals they do not give them training but if they are coming in as new officers they all have to go through the orientation. Same orientation to all new employees to the city.

Lt. Montano added that they do send every officer even if they come through lateral through this training.

Ms. Guerrero asked if they could see the items they are trained on in a piece of paper.

Mr. Martinez said it is in the Resolution. 2017-19

They also teach discrimination, what to do when it occurs in the work place in part of the orientation process. They describe what it looks like and what it is and identify the mechanism to work through this process.

Ms. Guerrero asked how long the training is?

Mr. Martinez stated that the training is 8 hours in duration. They cover from accountability, customer service, transparency, an orientation to City Government, an orientation to the Mayor and the workforce, policies on central harassment, discriminatory harassment, sexual harassment prevention, hostile work environment, employee benefits package as part of their employment process, pieces on retaliation and continue in to workplace violence, prevention workplace violation. They also have other department heads come in and make presentations on their specific segments in city government. There is also a cultural competency part.

Ms. Diaz asked if all of those trainings are open for public record and Mr. Martinez confirmed, yes.

Ms. Diaz wanted to have clarified, the only written information, directives, written rules, policies; basically the directive that was just sent out on what to do if federal agencies come to any individual department or staff they have to notify; that is one written thing and the Resolution itself, is that correct?

Mr. Martinez, every single employee receives a CD that has every policy and procedure, there are certain Resolutions that they receive and they can access all documents on line as well. They receive and sign for this CD.

Ms. Diaz: Does this Resolution have the policy and procedures written under the Resolution.

Mr. Martinez: There have always been procedures, there have always been guidelines.

Ms. Diaz: So this Resolution has its own guidelines and procedures? That is what we are requesting.

Mr. Martinez: You have to do an IPRA request. I don't give information out so you will have to be more specific on your request.

Ms. Diaz: That is what we officially requested. We asked for a copy of the guidelines and the procedures written under the resolution.

Chair: As a city committee we will ask for the procedures and guidelines based on the Resolution.

b. Update on I-9 audits

Marcela Diaz wanted to be assured that everyone has the information that has been posted on the city websites as well as the information they are giving out in presentations in the communities. Some of them are co-sponsored by Welcoming Communities as well as the City (distributed document both in

English and in Spanish). They do workshops for workers in the community letting them know if they voluntarily quit from their jobs, for instance as a result of the I-9 audits, what their rights are. She believes some of the important points that the committee members know since they are working directly in the community is that just because an I-9 audit is done, doesn't mean that it doesn't impact the workers that previously worked at that institution or that business or that work there currently. She stated that it is important to inform these individuals that when they fill out their I-9 that sometimes employers make copies of the documents including the driver's license, which has, the persons address and they sometimes put their address directly on the I-9 form. If that address is the current address, ICE can locate them. The main concern is that these audits are still in process. When things die down they let their guard down, and families should not let their guard down because I-9s are often turned over and often those I-9 documents are for people who no longer work there. So if you don't even know your ex-employer was audited, you might still get a knock on your door at 6 am in the morning because ICE has your information. Since they aren't getting people like throughout the country, through the local law enforcement, the county jail, the Sheriffs department, these are other ways they are able to get people, but not through the same degree as other countries that have the opposite of our Sanctuary policy. Our main goal is to let businesses know what they can do to protect their employees, we continue to let businesses know that we expect them on their next period if people quit, if they fire people, that they have 5 days to pay them their last check. People need that money to figure out what to do. We do in our presentations for workers and families help them understand what their rights are in the workplace but they need to know what to if they come knocking at their door, they may not even know that they are caught up on this. Your ex-employer might be audited and turn over your I-9 from 3-years ago and if it has your current address that information can be used to generate an arrest warrant for you. This is why we are doubling our efforts to give not just the information on the workplace but also all the information if ICE shows up at your doorstep or you are walking out to your car. We have received some alarming reports about ICE including the exit to mobile home parks and blocking vehicles asking people to get out and in occasions they run their information against a list and then they decide if they should apprehend them or not. These are things that are happening, not only in Santa Fe but around the county.

Marcella: A reminder for the committee is that in non-sanctuary communities there has been a higher increase of enforcement because people don't have licenses, they get stopped by law enforcement and turned over. That is where you see a major turn, that doesn't mean it isn't happening here we are just able to mitigate with our Sanctuary policy. The other thing is that these I-9 audits have been happening in many cities not just sanctuary cities. Ms. Diaz stated that it is because of our policies that we can come together as a community,

have this information on our website, do the work that we need to do to protect people.

The Chair expressed her thanks to the reporter for the news article that was prepared by the Santa Fe Reporter. It is important to emphasize not only because we are a sanctuary city we are under more pressure. We need to be alert.

Ms. Lopez asked what happens to the owners of the businesses/restaurants, do they get punished?

Ms. Diaz said, again this is in process. There is a range of tools that the Federal Government has, they can find them and often times they can make them correct their records or their information. Over 60 business in New Mexico were audited both sanctuary and non-sanctuary communities and this is happening. It is important to remember that the Trump Administration said that they would increase this along with all of the other enforcement activities we are seeing. Since we do have our liaison here from the Police Department, although it is not our local police department this really causes a lot of fear and anxiety in our community and we tend to shut down regardless of any law enforcement. These policies are hampering our city from doing its job in the law enforcement realm. This is why it is so important for our local law enforcement officials are appraised of what is going on and understand the heightened anxiety isn't because of them but could affect their interactions.

Ms. Guerrero, in terms of the Santa Fe Chamber of Commerce, I understand that more than 800 businesses have membership. Do they have any possibility of doing something in terms of preventing these types of situations?

Ms. Diaz offered to send information to the Santa Fe Chamber of Commerce and possibly invite them to a future meeting.

- c. Update on Increased Enforcement Activities in Santa Fe
Lt. Judah Montano: No increase enforcement from the Santa Fe Police Department and they have not received and requests for information from the Federal Departments for assistance.

Ms. Diaz: Can you tell us what different arms of Homeland Security you are in contact with. The Mayor had said that another arm of Homeland Security had reached out, we spoke about this unofficially at the last meeting, where we didn't have quorum, that the federal protective services, law enforcement part, it is a police force of Homeland Security, that they do a lot of building support for high profile events because the Governor's Association is coming in the summer. They came to city hall and that is what precipitated the latest directive while we were filing wage complaints and it happened to be very

unfortunate timing. We had members of the immigrant community accessing city services and while they were walking in they saw Department of Homeland Security Protect Services Police, which is when we inquired as to what they were doing there. It took days for them to tell us and that is why it is nice now to have a protocol in place where the city employees can immediately let the city manager and the Mayor's office know. Ms. Diaz said she was just wondering if there are any other agencies that are parts of that agency?

Lt. Montano said that the NGA conference will be held in Santa Fe this summer and they are working with Secret Service but they don't have detailed information of who is coming.

Ms. Diaz said she would like to have as much information on what branches of law enforcement are reaching out to the city. She feels that the more information they have as a committee and as organizations the faster they can get the information out to the community to assist with any concerns or anxiety that they may have.

Lt. Montano said that State Police is handling this endeavor and SFPD will be working on city of Santa Fe protection.

Chair said she spoke to the Mayor and he told her that there were four ICE agents that were trying to reach out and in this conversation he asked if the Immigration Committee wanted to speak to ICE. The Chair said yes, the Commission would like to talk to them. We have done this before with the USCIS, we invited them, asked questions. The Chair asked the committee how they felt about inviting ICE Agents to a future meeting and they all agreed that they would like to have them come.

Ms. Diaz reiterated, if you see Department of Homeland Security Federal Protective Police Patrol Cars, it is not ICE, they do have a broad range of powers but apparently what they are doing here is preparing for the NGA conference.

d. Update on State Wage Enforcement – Marcella Diaz

As you know SOMOS un Pueblo Unido along with other organizations sued the State Department of Work Force Solutions (DWS) for inadequately and illegally not enforcing parts of our 2009 Minimum Wage Act. She provided information on the settlement details. In broad strokes, DWS already adopted rules and will vacate its practices of turning workers away whose claims are over \$10,000, turning away workers whose claims of unpaid wages go beyond one-year, we have 3-years from the last violation to file a complaint under state law and it is a continuing course of conduct. We are one of two states with continuing course of conduct protection, as long as that last violation happened in the last 3-years you can get as many years as you were a victim

of wage theft. The state wasn't applying trouble damages, now they will plus interest on the original amount. They will not close wage claims for arbitrary procedural reasons and also are not going to require claimants to communicate in English with the agency, which is what they were doing. They were also requiring claimants to notarize their claims. When they didn't have a valid State ID, which we know has been made more difficult, they would not be able to notarize and file their complaints even though the law didn't require it. Those are the new rules, they have already adopted the new Investigations Manual that is on their website and we had input on. The other thing for our Committee to know is that anyone who filed complaints after January 17, 2014 and were turned away or their cases were closed or weren't allowed to continue their cases for any arbitrary reasons, they have all been provided notice. A lot of people were even allowed to file their first complaint or provided notice; they can also try to reopen their cases with DWS they just have to do this before March 2019. That is a hard deadline that we want our community members to know. Ms. Diaz stated that she has a lot of information to share on the new procedures from DWS if the committee would like. The day after this was approved and presented to the Judge, 5 workers (2 present and 3 past workers) from Santa Fe Bar and Grill, under these new regulations filed complaints for over tens of thousands of dollars collectively for unpaid overtime. Some of them were also minimum wage violations and they filed complaints with the city and they are all under process. Ms. Diaz felt that this information was relevant to this committee. People's whose cases weren't closed but they weren't given a judgment but they didn't sign a settlement agreement, or they were granted far less than what they were allowed under the law suit, they can reopen their cases if they haven't settled an agreement. City minimum wage questions, all of their documents were translated in Spanish. There are 26 offices for DWS and some in rural areas and they are all being trained on these new directives.

Ms. Diaz said we still have a long ways to go, on the city front, just because we talked about language access as part of our Resolution and it is one of our recommendations. I was just at our office right now and our members that file complaints for the city minimum wage part, the city doesn't have jurisdiction on overtime, but does the city minimum wage; all of their documents were translated in Spanish, that is good and we know we already made that change and it continues to work.

- e. Update on Written Statement Submitted by R.V. (Constituent)
Chris Sanchez was going to provide the translated version to the Chief of Police. Lt. Montano will F/U before the next meeting.

Gayle Herling (SFPS Adelante) asked if the Police Liaison does any follow up with the Superintendent of Schools. She stated that when different situations like this happen in the schools they need to be immediately addressed.

Lt. Montano stated that there is not a specific liaison with the schools. There is a Unit that works directly with children, but there is not an official liaison.

Ms. Guerrero agreed on the importance of this topic and recommended when they invite the Superintendent of Schools to come back to the Immigration Committee that this should be one of the questions.

- f. Update on U-Visas - Lt. Montano
In 2017 approved 29 and disapproved 4 and in 2018 approved 14 and disapproved 3.

Ms. Diaz: In the Welcoming Communities and Recommendation report that gets sent to the Mayor's office and city councilors, it included a contract that was with SOLACE to deal with any questionable or to be a resource for the Police Department when it came to U-Visas and not certifying the U-Visas. They were going to be working on tougher cases and tougher issues. Given that in 2018 three have been, and I wanted to say that there was one issue with a U-Visa that was denied, attorney's reached out to us, we were in contact with that liaison that is paid by the sub-contractor with the city to help the department and she arranged a meeting with the interim Police Chief and attorneys to talk about the case, even though it was previously denied, it was certified. Ms. Diaz wanted to know if Ms. Sheila Lewis was called in to work on the denied UVisa applications.

Lt. Montano restated the question to ask the Police Chief if Ms. Lewis was called in on the 3 that were denied in 2018. Ms. Diaz said, yes.

Ms. Diaz also added that a contract was signed in June 2017 between the City of Santa Fe and SOLACE and Ms. Sheila Lewis to continue as a full-time domestic violence coordinator with an amended scope of service. (*Ms. Diaz proceeded to read verbatim the excerpt from the contract*). This was the reasoning for the question if her expertise was tapped for the service on the denials.

- g. Update on Suggested Training with SFPD – Lt. Montano
Lt. Montano spoke with Chief Padilla who is receptive about the representatives from the Immigration Committee coming in to the department to express the struggles that are being experienced in the immigrant community. Lt. Montano asked for the outline and material that will be presented and he will follow up with the Chief for approval.

Ms. Diaz will get the program outline together with the Chair, Ms. Lopez and Ms. Hayre for review/approval.

h. Update on Bi-Lingual Incentives – Aaron Martinez.

He asked what was discussed at previous meetings and what was the question for him to address?

Ms. Diaz said that they would like more information on pay incentive program for bi-lingual employees mentioned in the city manager update of January 10th. What does the program currently look like, what is the budget, how many are employees are receiving these incentives and what departments do they work for?

Aaron Martinez: I do not have most of that information with me today. What they do now is that HR has put this information out to AFSCME, the entity that actually controls this because it is an addition to their payment since they have to be AFSCME members which is one of the qualifications, part of the Union. It is called the 2018 AFSCME Bi-Lingual Incentive Pay application; this is the process they have to go through. Where we are right now, HR has sent it out to all AFSCME members and they have a deadline to apply for it by Friday, April 13th. Testing will be completed on April 25th and they will do their evaluation process then. There is a verbal and a written test and right now there are approximately 100 employees in the program. If they are in the program they don't have to re-apply. From the collective bargaining agreement it looks like they receive \$40 per month for full time classified employees and \$20 a month for part-time classified employees.

Ms. Diaz asked if most of those employees are at the Santa Fe Police Department.

Mr. Martinez said no, it is throughout the city and the breakdown can be provided after the new employees are coming in. Presently there are 140 employees.

Ms. Guerrero asked for clarification, are you talking about bi-lingual or Spanish specifically. Cultural approximation is important and she suggested if at all possible to have a minimum criteria to have cultural competence to have our community understand.

Mr. Martinez said that is an excellent idea but it is going to be limited to the collective bargaining through the Union, the committee would have to talk to the Union about that.

Ms. Lopez asked if Police is AFSCME and if the bi-lingual incentive is the same?

Mr. Martinez said that Police and Fire have a different Union and he believes that the incentive is different.

Lt. Montano stated that for police the criteria is more stringent as they have to be able to read and write in Spanish, if you go to a scene of an accident you need to be able to process the full incident in the language needed efficiently.

Ms. Lopez stated that this was interesting because earlier as discussed, the mother who came to share her concern stated that there was a not a Spanish speaking officer or person to take her report at the Police Department.

Lt. Montano: If you come in contact with someone who hasn't received adequate police services please call him at any time. (*Phone number and business card was provided to the committee members*).

Mr. Martinez also reiterated that there is a Constituent Services Department as well for any concerns or if someone feels underserved.

Ms. Diaz: It sounds like there are three different Incentive Programs: Fire and Police and the city. Can you get information on each of those departments? Mr. Martinez stated that they have three different units and that he will have to go to each one for this information. Ms. Diaz said she would like to know what the incentive is for firefighters, where they are. She is concerned about non-union or non-classified union or AFSCME positions. Are there any positions that interact directly with the public that are not Union or AFSCME? Say City Attorney's that deal with the public. There is no incentive program for them? Mr. Martinez responded, no.

Chair: Bilingual do you track any other languages? Mr. Martinez said no not at this time. The chair asked if there is any way to find out? Mr. Martinez said he would research. Ms. Diaz also made reference to information provided to the committee members in the past about a city translation line that people could call. Ms. Diaz would like to know how often this is utilized. Mr. Martinez will look in to this and provide feedback.

- i. Update on Response Regarding Language Access and Securing Services of an Independent Contractor to Assess Language Barriers and Needs.

Victor reported for Mr. Chris Sanchez: The City Attorney's office recently hired someone who will deal with wage complaints and IPRA who is bi-lingual. Secondly, there is incentive pay for bi-lingual speaking, and are working to have the Website updated with bilingual information, new literature, brochures, and other important information in English and Spanish. They are working to have Spanish translation services at all city council meetings.

Ms. Diaz asked if there is an update to hire a dedicated independent contractor to do a thorough assessment of language barrier and needs.

Victor continued; as we are working on these items we have not initiated a procurement process to secure a procurement officer to assess language barriers for the government.

Ms. Diaz stated that they have just forwarded recommendations to the Mayor from the committee on what they adopted. Hopefully Mr. Sanchez communicated that information to the City Managers office.

6. Old Business:
a. Subcommittee Updates:

The Chair spoke to the Mayor and he would like an update on all sub-committees, when they were formed and the progress of how they work.

- Welcoming Communities

Ms. Hayre: No update on the National level. Ms. Diaz sent the recommendations for the adopted implementation of the 2017-19 Resolution to the Mayor on behalf of the committee.

- Education

Ms. Lopez: We have had a couple of meetings; previously reported about meeting at Capital High on the students not getting the support in language they need. After that meeting she met with a group at SFCC Higher Ed. who are interested in helping prepare students to go to SFC. They are very interested in working with the school system, training of the teachers, we continue to talk to each other to see what support immigrant students can get from SFCC.

Ms. Guerrero said they are also working with SFPS – Diversity and Equity Committee. One concern is that the families and students who are Spanish speaking is not a transversal issue for SFPS. She is also on the Cultural sub-committee and the goal for next meeting is what we think we need to propose for SFPS in terms of the La Entrada celebration. The Superintendent has asked this sub-committee to provide suggestions on what to do with these schools in this context. It was reiterated that there is problems in the schools with the kids and the families and this not being a priority. The families have concerns about the teachers and not being able to communicate those concerns because they are immigrants. Ms. Guerrero reiterated the importance of inviting Superintendent of Schools to the next meeting to discuss the concerns. (F/U)

Mr. Herling said it would be helpful if the committee could put the questions they would like the Superintendent to address prior to the meeting so she could come more prepared with answers. She is aware by information that is brought back to her by Ms. Hayre and Gail, but she would do much better with systematic questioning and challenges. Ms.

Herling said that they have children from Guatemala being put in to the school system with no bi-lingual teachers. At this point they need a Spanish-speaking teacher who can speak their language. The Superintendent is aware of these things but more so from people like Ms. Herling and Ms. Hayre who are constantly telling her. She needs to hear it from the city's Immigration Committee. She does much better with systematic questions and challenges. Ms. Lopez asked Mr. Herling, Mr. Conejo and Ms. Hayre to send her questions.

The new Director of Adelante, Maria Serrano would be interested in being a member of the Immigration Committee. A letter should be created and sent to the Mayor if they are interested.

- Social Media & Communications

Jewel Cabeza de Vaca: Chris Sanchez has also helped, we have started by asking each and every member providing a picture and bio, information is needed, highlight what you would like to be on the website. We want every member to send in the information, Julie has designed the social media for the website, important to send information to Chris he will review and get it posted to the website. If there is a time limit, update it as it goes forward. The community needs to know about all of this valuable information that has been shared today. Social media is great to disseminate this information to our community. Ms. Cabeza de Vaca said they will use the city website. Subcommittee information is on the website. The city is standing by this 100%. Ms. Diaz is concerned about the format. The Chair said send the information to Chris, Julie Sanchez will do the formatting.

Mr. Rios wanted to know if any committee member will be able to post to the website? The Chair and/or Victor will need to ask Chris Sanchez. Mr. Rios said he has done this for other committees and volunteered to help. He will help on Social Media.

- Refugee Resettlement

No update.

- Police Department

New Chief: Invite him to the next meeting and talk about collaborating with the Immigration Committee.

7. Comments from the Chair and Committee Members

Chair: The Mayor has asked her to stay until transition is completed and staying through the appointments of a full committee. We will talk about sub-committees. We want to make sure that all sub-committees are full. Chair will meet with committee members, it is important to invite as many

people as possible that have interest in the Immigration Committee and they can submit their interest to the Mayor to be members.

Ms. Guerrero: Very important to invite the Mayor and the new Chief of Police to come together at a future Immigration Committee meeting, possibly calling a special meeting for the Mayor and Chief of Police. Ms. Guerrero said she wanted clarification on her position with the Immigration Committee. It is important and we need the Chair to be present, we need to reorganize the committee and discuss the importance of a quorum.

Question: Reappointment. Ms. Diaz asked if they want to seek reappointment, what do they do? Chair did explain this to the Mayor; at this time he is interested in filling the vacant positions first. Chair has committed to fill the sub-committees that are vacant and he will make a decision on members who are presently appointed. Chair said it is important to assure that the transition is done appropriately, and she will commit to stay on until her work is done.

Ms. Diaz said that she and Ms. Hayre can volunteer to help on any reports. We have 2 vacancies right now; Mr. Sanchez was going to talk to Mr. Rios and Mrs. Hemmer to see if they would remain on the committee. The two vacancies are for Mr. Hemmer and Maria Jose.


Next month agenda action item: Dissolve Refugee Resettlement sub-committee and Mr. Rios will go to the Social Media sub-committee.


Mayor did mention that if we know of others in different ethnic groups to invite them to the meeting. Mayor also asked if we know anyone in the Muslim community.

Ms. Diaz said that it is important to look at the website and to review the goals.

8. Report from Staff
May 8th is next meeting.
9. Adjournment
There being no further business to come before the Immigration Committee, the meeting was adjourned at 6:02 pm.

Signature


Alejandra Seluja, Chair


Fran Lucero, Stenographer



QUÉ HACER SI VIENE INMIGRACIÓN A SU LUGAR DE TRABAJO



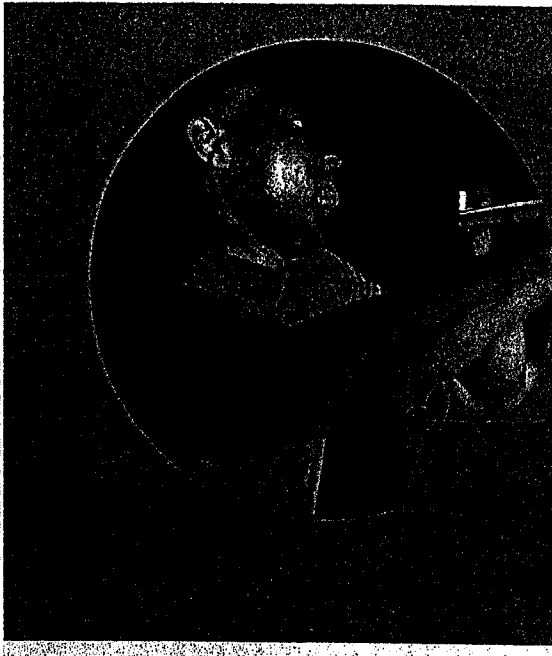
NATIONAL
EMPLOYMENT
LAW
PROJECT



NATIONAL
IMMIGRATION
LAW CENTER



QUÉ HACER SI VIENE INMIGRACIÓN A SU LUGAR DE TRABAJO



El ataque del presidente Trump contra los inmigrantes afecta a los trabajadores inmigrantes y a sus empleadores. Esta guía explica:

- las acciones de inmigración más comunes que afectan a los empleadores;
- recomendaciones para que los empleadores se puedan preparar;
- los derechos y responsabilidades de los empleadores; y
- qué pueden hacer los empleadores después de una acción del Servicio de Inmigración y Control de Aduanas (ICE).

¡Importante! Esta guía ofrece información general. **No es asesoramiento legal.** No está adaptada para su situación en particular. Si necesita asesoramiento para su caso, hable con un abogado de inmigración.

QUÉ PUEDEN HACER LOS EMPLEADORES SI EL SERVICIO DE INMIGRACIÓN VIENE A SU LUGAR DE TRABAJO

Los agentes de inmigración pueden ir a su lugar de trabajo para hacer una **auditoría de formularios I-9**, una **redada** o para **detener a personas específicas**.

¿Qué es una auditoría de formularios I-9?

- Una auditoría de formularios I-9 es cuando ICE viene a su empresa para verificar que haya cumplido con las reglas del formulario I-9.
- El formulario I-9 confirma la identidad de un trabajador y su autorización para trabajar en los EE. UU.

Requisitos del formulario I-9 para el empleador

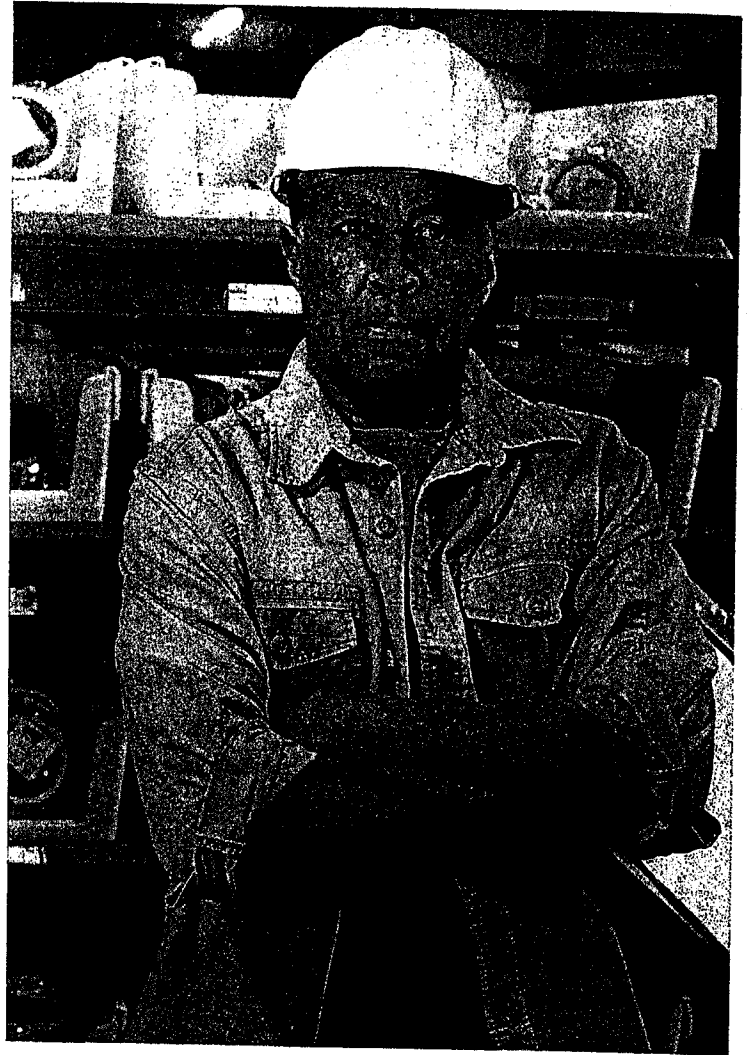
- Tiene que llenar un formulario I-9 para cada empleado nuevo.
- Tiene que guardar el formulario I-9 en el expediente por 3 años después de contratarlo o 1 año después del último día de trabajo del trabajador, según lo que ocurra más tarde.
- No le puede pedir a un trabajador que llene el formulario I-9 más de una vez, a menos que su permiso de trabajo esté por vencer o tenga otra razón válida y legal.
- Nota: No hace falta guardar una copia del documento de identidad del trabajador o sus documentos de autorización de trabajo.

Si la auditoría no sale bien . . .

- Si ICE decide que no cumplió con las reglas del formulario I-9, puede recibir:
 - Una orden para dejar de contratar a personas sin un permiso de trabajo válido.
 - Multas y sanciones civiles y penales.
- Puede obtener más información sobre el formulario I-9 en el Manual para empleadores (Handbook for Employers): <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

¿Qué es una redada del ICE?

- Los agentes del ICE van a un lugar de trabajo sin avisar, como parte de una investigación de un empleador.
- Los agentes del ICE *no* son agentes de policía. Pero sus uniformes pueden decir "Policía" o "Agente federal". Pueden portar armas de fuego. A veces, cuando hay redadas del ICE, los agentes del ICE van acompañados de agentes de policía locales.



¿Qué pasa si ICE quiere detener a un trabajador en particular?

- Los agentes del ICE pueden ir a su lugar de trabajo para encontrar a una o más personas en particular. Mientras se encuentren allí, pueden tratar de interrogar, detener e incluso arrestar a otras personas.

CÓMO SE PUEDEN PREPARAR LOS EMPLEADORES PARA UNA ACCIÓN DEL ICE

1. Elaborar un plan de respuesta escrito por adelantado

- Hable con otras empresas o asociaciones empresarias. Pregúnteles qué están haciendo para prepararse.
- Haga un plan adecuado para usted.
- Practique, como si fuera un simulacro de incendio. Estarán más preparados si saben qué decir y hacer.
- Conéctese con redes de respuesta a inmigración en su zona. Brindan respaldo con cuestiones de familia, legales, financieras y de medios de comunicación si los agentes del servicio de inmigración van a su empresa.



2. Capacitar a su personal para que **NO HABLE** con los agentes del ICE

- Capacite a todos los trabajadores para que **NO** permitan que los agentes del ICE ingresen en su lugar de trabajo.
- Un trabajador puede decir: *"No le puedo dar permiso para entrar. Tiene que hablar con mi empleador"*.
- Capacite a todos los trabajadores para que **NO** interactúen con los agentes del ICE. Si los agentes del ICE les hacen preguntas o les piden algo, los trabajadores deberían callarse o decir: *"No está autorizado a entrar. Hable con mi empleador"*.

3. ¡Conozca sus derechos!

Cuando ICE va a un lugar de trabajo, los empleadores tienen ciertos derechos. Los agentes del ICE no siempre tienen el derecho a ingresar en su lugar de trabajo, parar o arrestar a sus trabajadores, o llevarse documentos.

Trabaje con un grupo legal o comunitario para coordinar una capacitación sobre "Conozca sus derechos" para usted y su personal, y páguele a su personal por el tiempo invertido en la capacitación.

QUÉ DEBEN HACER LOS EMPLEADORES CUANDO LLEGA EL ICE

Para áreas públicas

- Cualquiera – incluso los agentes del ICE – pueden ingresar a las áreas públicas de su empresa sin permiso.
- Las áreas públicas pueden ser el comedor en un restaurante; un estacionamiento; la recepción o sala de espera de su empresa.
- El hecho de que estén en un área pública **NO** autoriza a ICE a **parar, interrogar o arrestar** a cualquiera.
- Nadie puede entrar a un área *privada* de su empresa sin su permiso o una **orden judicial**.

CONSEJO: Para demostrar que algunas áreas son privadas, ponga un letrero que diga "Private", mantenga las puertas cerradas o con llave, y adopte una política de que los visitantes y el público no pueden entrar a esas áreas sin permiso.

Para áreas privadas

- Los agentes de inmigración pueden entrar a un área privada SOLO si tienen una *orden judicial*.
- Una orden judicial tiene que ser **firmada por un juez** y decir "**U.S. District Court**" (Corte de Distrito de EE. UU.) o **State Court** (Corte Estatal) en el encabezamiento.
- Sin una orden judicial, los agentes del ICE necesitarán SU permiso para ingresar en áreas privadas de su empresa.
- Si los agentes del ICE tratan de entrar en un área privada, usted debería decirles: "*Esta es un área privada. No pueden entrar sin una **orden judicial** firmada por un juez. ¿Tienen una orden judicial?*"
- Si los agentes del ICE le dicen que tienen una orden de registro judicial, pida una copia y léala.
- A veces, los agentes del ICE tratan de usar una *orden administrativa* para entrar. Pero una orden administrativa NO permite que los agentes ingresen a áreas privadas sin su permiso. **Las órdenes administrativas** no son dictadas por una corte. Dicen "Department of Homeland Security" (Departamento de Seguridad Nacional) y estarán escritas en un formulario I-200 o I-205.

Durante la redada

- **¡Mantenga la calma!** Pídale a sus trabajadores que también mantengan la calma. No salgan corriendo a las salidas. Esto solo empeorará la situación, porque los agentes del ICE pueden decir que la gente que está corriendo probablemente esté violando las leyes de inmigración.
- Cuando ICE le muestra una orden administrativa con el nombre de un empleado:
 - **NO** tiene que decir si el empleado está trabajando ese día o no.
 - **NO** tiene que llevar a los agentes del ICE donde está el empleado nombrado en la orden (aunque se encuentre en el lugar de trabajo en ese momento).
- NO ayude a los agentes del ICE a separar a la gente de acuerdo a su situación migratoria o su país de origen.
- Supervise a los agentes para verificar que estén cumpliendo con lo que dice la orden.
- Si usted o un empleado está dispuesto a hacerlo, filme o grabe lo que los agentes del ICE están haciendo en su lugar de trabajo. Es posible que pueda demostrar que los agentes violaron sus derechos, o los derechos de sus trabajadores.

¿Qué pasa si los agentes del ICE tratan de parar, interrogar, detener o arrestar a un trabajador?

- Los agentes del ICE quizás traten de parar, interrogar o incluso arrestar a un trabajador sin la debida autorización.
- La mejor manera en que los trabajadores pueden proteger sus derechos es **guardar silencio y pedir un abogado**.
- Los trabajadores no están obligados a entregar ninguna tarjeta de identificación o documento a ICE. Todos los trabajadores tienen este derecho.
- Cualquier información que un trabajador le dé a ICE se puede usar en su contra más adelante.

Inmediatamente después de la redada

- Después que ICE se haya ido, escriba o registre lo siguiente:
 - ¿Cuántos agentes del ICE estuvieron presentes (adentro y afuera)?
 - ¿Cómo estaban vestidos los agentes? ¿Qué armas traían?
 - ¿Los agentes le dieron a entender que usted o sus trabajadores no se podían mover o salir?
 - ¿Los agentes maltrataron a alguien? Si sí, ¿cómo?
- Notifique al sindicato de los empleados.
- Si ICE arresta a cualquiera de sus trabajadores, pregúnteles a los agentes del ICE dónde los llevan. Esta información ayudará a la familia y el abogado del trabajador a encontrarlo.



Qué hacer cuando se hace una auditoría de I-9

Cuando ICE le notifica que va a hacer una auditoría de formularios I-9, comuníquese con un abogado de inmigración. Notifique también a sus trabajadores y a su representante sindical sobre la auditoría.

- La ley le da **3 días laborales** para mostrar sus formularios I-9. No entregue sus documentos de antemano.
- Tiene el derecho de hablar con su abogado antes de responder a preguntas o firmar documentos del ICE.
- Permita a sus empleados que tengan compañeros o representantes sindicales presentes durante las auditorías de I-9.
- Después de examinar los formularios I-9, ICE puede encontrar algunos empleados que no están autorizados a trabajar. En ese caso, ICE le dará 10 días adicionales para conseguir autorizaciones de trabajo válidas para esos empleados. Si no puede conseguir los documentos en ese plazo, le dirá que tiene que despedir a dichos trabajadores.
- En ese caso, **tiene** que notificar a los trabajadores afectados sobre la auditoría.
- Pídale a ICE que le den más tiempo. Esto le dará a los trabajadores afectados más tiempo para hablar con un abogado de inmigración.
- Si sus trabajadores están afiliados a un sindicato, quizás tenga que proporcionar copias de los documentos de auditoría al sindicato y colaborar con el sindicato para responder a la auditoría.

Qué hacer después de una redada o auditoría de I-9 del ICE

Después de una redada o auditoría de I-9 del ICE, uno o más trabajadores pueden ser sometidos a deportación o quizás no puedan volver al trabajo. Esto puede afectar a su empresa y la moral de sus trabajadores.

Puede hacer lo siguiente para brindar respaldo a su personal y la comunidad.

OFREZCA LICENCIA PARA FALTAR AL TRABAJO MIENTRAS LOS TRABAJADORES AFECTADOS SOLICITAN UNA AUTORIZACIÓN DE TRABAJO

- Deles licencia a los trabajadores para que puedan hacer los trámites necesarios y/o permítales volver a sus mismos cargos con la misma veteranía y beneficios una vez que le proporcionen los documentos de autorización de trabajo.

PAGUE LOS SUELDOS Y BENEFICIOS ADEUDADOS CON PUNTUALIDAD

- Pague a los trabajadores todos los sueldos adeudados y beneficios acumulados lo más pronto posible después de que su relación de trabajo haya terminado.
- Es importante que cumpla con los requisitos de las leyes laborales federales y estatales.

HAGA UN PAGO DE SEPARACIÓN A LOS TRABAJADORES QUE NO PUEDEN VOLVER A TRABAJAR

- Los trabajadores que no pueden volver a trabajar necesitarán dinero para mantenerse a ellos y a sus familias. Es posible que tengan que pagar para obtener asesoramiento legal.
- Si no tiene una política de pago en caso de separación, considere la posibilidad de darles fondos adicionales a los trabajadores que se encuentran en esta situación.

CONTRIBUYA A UN FONDO LEGAL PARA CASOS DE INMIGRACIÓN

- Un empleado sometido a deportación necesitará un buen abogado, y puede tener la opción de salir bajo fianza hasta su audiencia con el juez de inmigración. Eso quiere decir que se pueden quedar con su familia en la comunidad durante ese periodo.
- Pueden necesitar su ayuda y la ayuda de sus compañeros de trabajo para recaudar dinero para pagar al abogado o la fianza.
- Puede contribuir a un fondo legal para casos de inmigración con este fin. O puede crear un fondo usted mismo.

PROPORCIONE UNA REFERENCIA A LOS TRABAJADORES PARA CONSEGUIR TRABAJO EN EL FUTURO

- Dígales a sus trabajadores que está dispuesto a dar referencias a futuros empleadores potenciales.

MANTÉNGASE CONECTADO CON LOS ESFUERZOS DE RESPUESTA A INMIGRACIÓN EN SU COMUNIDAD

- Las organizaciones y abogados de la comunidad frecuentemente organizan una respuesta a una redada en un lugar de trabajo u otra acción de inmigración.
- La respuesta de la comunidad puede incluir una campaña de recaudación de fondos para la defensa legal y ayuda a la familia del individuo.
- Los empleadores y trabajadores pueden encontrar apoyo, orientación e información útil si se mantienen conectados con estos esfuerzos de respuesta en la comunidad.

ANTES DE UNA ACCIÓN DE INMIGRACIÓN

- ☐ Encuentre un abogado de inmigración calificado ahora, antes de que ocurra algo.
- ☐ Elabora un plan de respuesta escrito. Practique su plan con sus trabajadores. Practique lo que quiere decir y hacer.
- ☐ Proporcione capacitación a todo su personal sobre sus derechos.
- ☐ Enseñe a su personal que:
 - NO trate de escaparse si aparecen los agentes del ICE. Eso le dará a ICE una razón legal para arrestar a los trabajadores.
 - NO le dé permiso a los agentes del ICE para entrar en su lugar de trabajo.
 - NO conteste preguntas ni dé ningún tipo de información.
- ☐ Usted y sus trabajadores tienen el derecho de guardar silencio y pedir un abogado.
- ☐ Dé a sus trabajadores una lista de abogados y organizaciones que puedan proporcionar asesoramiento legal sobre inmigración de alta calidad, gratis o con bajo costo, para ellos y sus familias.
- ☐ Conéctese con una red de respuesta a inmigración en su zona.

DURANTE UNA ACCIÓN DE INMIGRACIÓN

- ☐ Si los agentes del ICE entran a un área pública de su empresa, diga lo siguiente: "Yo soy el empleador. No pueden ir a otras áreas de este lugar de trabajo sin mi permiso".
- ☐ Si los agentes del ICE tratan de entrar en un área privada, dígales: "Esta es un área privada. No pueden entrar sin una orden judicial firmada por un juez. ¿Tienen una orden judicial?"
- ☐ Aliente a su personal a que filme o saque fotos durante la acción de inmigración (si están dispuestos).
- ☐ Si los agentes tienen una orden judicial firmada por un juez, pida una copia y léala. Si puede, haga una copia.
- ☐ Observe a los agentes cuidadosamente. Fíjese en lo que están haciendo. Verifique que están cumpliendo con lo que dice la orden judicial. Por ejemplo, la orden puede limitar las áreas que los agentes pueden registrar.
- ☐ Si los agentes del ICE tratan de interrogarlo a usted o a sus trabajadores, recuerde a sus trabajadores que tienen el derecho a guardar silencio y pedir un abogado.
- ☐ Cuando los agentes de inmigración se vayan, registre o anote todo lo que vio. Esto le ayudará a recordar los detalles cuando hable con un abogado más tarde.

Para obtener más información, comuníquese con la licenciada Haeyoung Yoon (hyoon@nelp.org) o la licenciada Laura Huizar (lhuizar@nelp.org) del Proyecto Nacional de Derecho Laboral (National Employment Law Project) o con Jessie Hahn (hahn@nilc.org) del Centro Nacional de Leyes Migratorias (National Immigration Law Center).



**NATIONAL
IMMIGRATION
LAW CENTER**

3450 Wilshire Blvd. #108-62
Los Angeles, CA 90010
T (213) 639-3900
F (213) 639-3911



**NATIONAL
EMPLOYMENT
LAW
PROJECT**

75 Maiden Ln, #601
New York, NY 10038
T (212) 285-3025
F (212) 285-3044



DWS Settlement Fact Sheet

Background:

In January of 2017 *Somos Un Pueblo Unido*, along with other worker's rights groups, filed a lawsuit against the New Mexico's Department of Workforce Solutions (DWS) for not adequately enforcing the state's wage and hour laws and leaving countless workers without a fair shot at recouping their unpaid wages. And in December of that same year, we reached a settlement agreement with DWS outlining many changes in how they will process and investigate wage claims.

Settlement details:

1. DWS will adopt new rules to stop the practices challenged in the lawsuit (**new regulations were adopted in Nov. 2017**). Specifically, DWS will stop:
 - a. Turning workers away whose wage claims are over \$10,000.
 - b. Turning away workers whose claims of unpaid wages go beyond one year.
 - c. Not applying treble damages in administrative judgements.
 - d. Closing wage claims for arbitrary procedural reasons without looking at the facts of the claim, such as not being able to locate the employer.
 - e. Requiring claimants to communicate in English with the agency.
2. DWS will adopt an investigations manual that will be published on DWS's website. Organizational plaintiffs have input on the new manual, and DWS staff will be trained on the law and new procedures.
3. DWS will identify and re-open wage claims that were not handled properly prior to the lawsuit, and they will send notice with this information to the class members who filed their claims after Jan. 17, 2014. Workers who were turned away, didn't receive their wages through the DWS process, or who did receive wages, but never signed a settlement agreement, have until March, 2019 to re-file their cases.
4. If DWS does not comply with the terms of the agreement, the organizations can go to back to the Court and ask the judge to intervene.

Key changes in new regulations:

1. DWS staff will help claimants fill out wage claims in person or by telephone, if they request it.
2. DWS will accept all wage claims unless the work was performed outside NM. If the last wage violation occurred within the last 3 years, the worker can claim all unpaid wages no matter the time frame.
3. DWS will ensure that there is interpretation and translation for limited English proficiency workers and employers.

4. Claim forms, form letters, and standard correspondence will be translated into Spanish.
5. Wage claim forms do not need to be notarized, and DWS will not require a social security number or an ITIN to file a claim.
6. DWS employees will provide help and resources to claimants in rural areas at Workforce Connections offices, such as use of computers, fax, phone, and meeting rooms for hearings. They will also connect the worker to a DWS staff member in Santa Fe, ABQ or Las Cruces to help her fill out a claim form (it is important to note that most Workforce Connections offices do not have DWS staff).

Here's the new process at DWS:

1. Worker files claim in person, or via phone, fax, mail or email. Worker will choose whether she wants to correspond by email or regular mail. If she files by phone, DWS will send the filled out claim form via mail to be signed and returned to DWS.
2. If the claim falls out of DWS's jurisdiction, DWS may close the case and send a letter to the worker explaining the reason.
3. If the investigator needs additional information, they will call the worker to do an initial interview.
4. Within 10 days, DWS shall mail the claim to the employer.
5. Within 10 days, the employer has to respond in writing and provide information and documentation to DWS including pay records. DWS can also call to interview the employer for more information.
6. If the employer disputes the claim, DWS will send the employers response to the worker. The worker will then have the opportunity to respond in writing or over the phone with the investigator. The worker needs respond within 10 days (excluding weekends and holidays); however, the worker or employer can request an extension.
7. After the investigation, DWS may schedule a settlement meeting. DWS will present preliminary conclusions along with amount owed including treble damages. DWS will give parties an opportunity to come to an agreement which will be written up by the DWS officer.
8. If they cannot come to an agreement, DWS may schedule a hearing where parties and witnesses will be placed under oath, but it is not necessary if DWS has enough information to issue a judgment. At this hearing, DWS will again give the parties an opportunity to reach a settlement before issuing a final decision.
9. After the hearing, DWS will issue a written decision. If DWS finds in favor of the worker, the judgement will include interest plus treble damages.
10. The worker or employer cannot appeal the administrative decision, but the worker can hire an attorney and go to magistrate, metropolitan or district court if she disagrees. If the employer does not pay, and if the judgement is over \$10,000, DWS may file an action in metropolitan or magistrate court. If the amount is higher, DWS will refer the matter with the case files to the district attorney.
11. If the employer does not provide credible pay records, DWS shall rely on the worker's records or credible recollection of the hours worked and wages.

Compiled by Somos Un Pueblo Unido – March 2018

1804 Espinacitas St. Santa Fe, NM 87505 • Tel. (505) 424-7832 • www.somosunpueblounido.org

Follow us on Facebook.com/SomosUnPueblo and on Twitter @Somosunpueblo