

## Department of Homeland Security's Worksite Enforcement Memorandum: What You Need to Know

November 3, 2021

On October 12, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas issued [Policy Statement 065-06](#) on the subject of worksite immigration enforcement. The memo sets forth fundamental principles to guide DHS policies and practices, announces immediate positive changes to worksite enforcement and prosecutorial discretion policies, and directs U.S. Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) to engage in a 60-day policy review process. The changes announced represent a paradigm shift that will make workplaces across the country safer and more equitable for all workers, ensuring that immigrants can do their jobs safely and speak out against unjust treatment without fearing employer intimidation, arrest, or deportation.

### Fundamental Principles

The memo instructs DHS to “adopt immigration enforcement policies to facilitate the important work of the Department of Labor (DOL) and other government agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards.” The recognition that DHS policies should affirmatively facilitate the enforcement of labor and employment laws is a significant shift for DHS. To that end, the memo outlines three goals that DHS policies and practices will advance going forward:

- Reduce the demand for unlawful employment by delivering more severe consequences to exploitative employers;
- Increase the willingness of workers to report employer violations and to cooperate in employment and labor standards investigations; and
- Broaden and deepen the mechanisms for coordination between DHS and the DOL, the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), and state labor agencies.

### Immediate Policy Changes

The memo announces two favorable policy changes that take effect immediately:

- **Ending worksite raids.** DHS will no longer conduct mass worksite raids and instead will refocus its workplace enforcement efforts to advance the goals and principles outlined above.
- **Consider requests for prosecutorial discretion for workers who are victims or witnesses of workplace exploitation.** The memo directs DHS to consider requests from the DOL (and presumably other labor and employment agencies) to exercise prosecutorial discretion for workers who are victims or witnesses of workplace exploitation. USCIS should consider these requests on a case-by-case basis and in evaluating them, USCIS should weigh any negative information in the individual's

case against the legitimate workplace standards enforcement interests of a federal government agency such as the DOL.

### **Sixty-Day Policy Review**

The memo sets up a DHS-wide policy review process. Within 60 days (by December 11, 2021), ICE, USCIS, and CBP must prepare, and submit to the DHS Secretary, agency plans that specifically address the following things:

- Existing or potential policies that have an impact on DHS’s role in supporting the enforcement of labor standards, such as the [DHS-DOL Memorandum of Understanding](#), ICE’s worksite enforcement strategy, and any policies that may prevent non–U.S. citizens from asserting their labor rights;
- Plans to lessen the fear that victims or witnesses of labor trafficking and exploitation experience regarding cooperation with law enforcement in the investigation and prosecution of employers – including grants of deferred action, continued presence, parole, and other immigration protections available to victims or witnesses of abusive labor practices;
- Policies to ensure that [E-Verify](#) is not manipulated by employers to deter workers from, or punish workers for, reporting unlawful labor practices, and present proposed recommendations for how E-Verify can be modified to ensure it is not misused as a tool of exploitative labor practices.

### **Takeaways**

- The memo represents a significant and long-fought-for shift by DHS to ensure that worksite immigration enforcement facilitates and advances the work of the DOL, the EEOC, the NLRB, and state labor agencies that enforce wage protections, workplace safety, the right to organize, and other labor and employment laws.
- The framing of the memo, and the fundamental principles it lays out, recognize that employers have been able to manipulate worksite immigration enforcement policies to exploit immigrant workers. This framing, and the policy review process, invite ICE, USCIS, and CBP—as well as advocates—to think about the big picture and how to stop immigration enforcement from undermining the labor and employment rights of noncitizen workers.
- While the memo announces two immediate favorable policy changes, including ending worksite raids and considering requests for prosecutorial discretion for victims and witnesses of workplace abuses, it also sets the stage for ICE, USCIS, and CBP to put forward new policies to advance labor standards enforcement.