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Don't Ignore "No-match" Letters These Letters Now Increase Employers' Risks and Obligations



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Federal authorities have adopted new immigration rules that require U.S. employers to resolve Department of Homeland Security (DHS) or Social Security Administration (SSA) "no-match" notices. Under federal regulations 8 CFR Part 274a, entitled Safe Harbor Procedures for Employers Who Receive a No-Match Letter, employers' failure to terminate workers who are unable or unwilling to resolve SSA discrepancies could face criminal and civil liability for employing unauthorized aliens. The new rules are a clarification of existing law and adoption of clear national policy on what is required of employers when they receive SSA "no-match" letters. The rule, however, does contain safe-harbor provisions that provide up to 90 days to resolve any discrepancies between identity information provided by their workers and the records of the Social Security Administration.

Until now, federal rules had been vague as to an employer's responsibility to respond to no-match letters, and many employers have ignored the letters. To compel compliance and resolve no-match issues, Immigration and Customs Enforcement (ICE) promulgated new rules that are to be effective on September 14, 2007. A temporary restraining order from a federal district court judge was issued on September 1, 2007, blocking the federal authorities on enforcement of these provisions.

Under the new regulations, employers may be held liable for criminal and civil penalties if they ignore "no-match" problems by failing to take specified steps within 90 days of receiving the letter. The Immigration and Nationality Act ("INA"), mandates that it is unlawful for an employer to continue to employ an alien in the United States knowing that the alien is (or has become) an unauthorized alien with respect to such employment, which is provided to the employer upon receipt of a "no-match" notice. Violation of this law, either through actual or constructive knowledge, can subject employers to both criminal penalties and civil fines. The previous regulations imposed few requirements on employers that received no-match letters.

The new regulations expand imputed knowledge to employers when the employers receive a DHS or SSA no-match letter and will support a finding, under INA, that the

employers had constructive knowledge that they employed unauthorized aliens. Such a finding subjects an employer to criminal and civil penalties. The new regulations, however, do provide "safe-harbor" procedures to avoid these criminal and civil penalties on receipt of a no-match letter. See "[Safe Harbor for Employers Information Center](#)". The "safe-harbor" steps are:

- Within 30 days of receipt of the no-match letter, the employer must take action by either correcting clerical errors or requesting the employee to correct the error directly with the SSA or the DHS and so advise the employer. If an employer receives a notice of discrepancy from the DHS, it must contact the local DHS office in accordance with the notice's instructions. The employee has 90 days in which to correct the inconsistency.
- If the inconsistency is not clarified within 90 days of receipt of the no-match letter, the employer must attempt to re-verify the employee's employment eligibility by completing a new I-9 employment verification form. The new I-9 form must be completed by the 93rd day. If the employer cannot verify the employee's work eligibility through the completion of a new I-9 form, the employer is required to terminate employment or risk a DHS determination that the employer had constructive knowledge it employed an unauthorized alien.

Employers should adopt new compliance measures and take the following steps to protect themselves from possible criminal and/or civil liability:

- Ensure all employees are legally eligible to work in the United States by timely and accurately completing I-9 forms for all new hires;
- Ensure company policies are implemented and executed in a non-arbitrary, consistent, and non-discriminatory manner;
- Determine immediately after receiving a no-match letter whether the discrepancy is a clerical error in the employer's records;
- If the discrepancy is not the result of a clerical error, re-verify the employee's eligibility with a new I-9 form as soon as possible;
- Implement policies to ensure that the employer meets the above "safe-harbor" requirements and deadlines.

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