

September, 2007

NEW EMPLOYER RESPONSIBILITIES: SOCIAL SECURITY “NO MATCH” LETTERS

The Department of Homeland Security (“DHS”) has recently issued a final regulation imposing new responsibilities on employers with respect to “no match” letters from the Social Security Administration (“SSA”). The final regulation is effective now.

A “no match” letter is a notification to an employer from the SSA advising that an employee’s name or reported Social Security number does not correspond to SSA records. The new regulation requires employers to take action upon receipt of a no match letter in order to resolve the discrepancy set forth in the letter. A failure to do so exposes the employer to fines of up to \$10,000 per incident for knowingly hiring an illegal worker.

DHS will consider an employer to have responded adequately to a no match letter if the employer takes the following steps:

- The employer checks its own records to determine if the discrepancy is the result of the employer’s clerical error. If so, the employer must correct its records, advise the SSA of such correction, verify that the corrected information matches SSA records and make a clerical record of such verification. These steps are to be taken within 30 days of receipt of the no match letter.
- If the discrepancy is *not* the result of the employer’s error, the employer must ask the employee to confirm that the employee’s name and Social Security number in the employer’s records are correct. If the employee advises that the employer’s records are incorrect, the employer must then follow the above procedure to correct, notify, verify and make a record as to the correction. If, on the other hand, the employee advises the employer that its records are correct, the employer must immediately direct the employee to resolve the discrepancy directly with the SSA. The employer must also advise the employee of the date of receipt of the no match letter and that the discrepancy must be resolved with the SSA within 90 days of the employer’s receipt of the no match letter.
- If the employer cannot confirm with the SSA that the employee’s name matches the Social Security number in the SSA’s records within the 90-day period, the employer must complete a new I-9 form for the employee. In this process (which must be completed within an additional three days following the 90-day period), the employer may not accept any document that contains the Social Security number that could not be reconciled with SSA records and the employee must present an identity document that includes a photograph.

- If the employer is still not able to verify the employee's identity and employment authorization based on the basis of the new I-9 and supporting documents, the employer must terminate the employee. Failure to do so at this point could lead to a finding by DHS that the employer has knowingly employed an undocumented worker.

Employers who want to avoid the risk of fines under the new regulation should establish appropriate procedures to implement the steps set out above upon receipt of any no match letter. However, employers should *not* take any adverse employment action solely on the basis of receiving a no match letter. Employers are also cautioned not to make any presumptions as to an individual's authorization to work in this country on the basis of the individual's national origin or ethnic background.

Although the above general information can serve as an important starting point for employer compliance with the new no match regulation, this information cannot be relied upon as legal advice. For consideration of your specific compliance issues, legal counsel should be consulted.

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