



Issue

NO-MATCH REGULATION MEANS NO WORKERS

Summary

The Department of Homeland Security (DHS) published a regulation March 26 establishing procedures for employers who receive a Social Security Administration (SSA) no-match letter that an employee's social security number does not match the name or number in the SSA database.

Under the regulation, if the discrepancy is not resolved and if the employer continues to employ the individual, DHS can use the no-match letter as the basis to find that the employer knowingly continued to employ an unauthorized worker in violation of Federal law. The regulation describes what an employer should do if it receives a no-match letter and wishes to avoid being charged with "constructive notice" that an employee lacks work authorization.

The regulation says that if the employer cannot confirm that the employee is authorized to work, the employer risks liability for violating the law by knowingly continuing to hire unauthorized workers.

Background

The Social Security Administration sends a Notice of Suspect Documents (also commonly referred to as a "no-match" or "no-match" letter) to an employer if an employee's name does not match the information in the SSA database – generally, the social security number (SSN). The purpose of the no-match letter is to solicit the employer's cooperation in correcting the discrepancy to ensure accuracy of payments and benefits to eligible workers. Although there are legitimate reasons for a "no-match" (including clerical error and name change), it is also the case that use of a false SSN or use of an SSN assigned to someone other than the employee will cause a no-match.

Similarly, the DHS/ICE sends a "no-match letter" to an employer if an immigration status document, or employment authorization document, was assigned to a different person, or if there is no agency record that the document

was issued. Such a discrepancy may arise from a notification that had been sent to the employer by ICE as a result of an audit or investigation.

New regulation

The regulations make no-match letters evidence that may be used to prove that the employer had constructive knowledge that the employee was unauthorized to work. Constructive knowledge is defined as "knowledge which may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain situation." For example, an employer that fails to complete or complete properly an I-9 Form for the employee may have constructive knowledge that the employee is not authorized to work in the U.S. The regulation adds no-match letters to the list of items where an employer may have constructive knowledge:

Penalties

The civil penalty for knowingly hiring an unauthorized alien is:

(A) First offense- \$275 to \$2,200 per unauthorized alien.

(B) Second offense- \$2,200 to \$5,500 per unauthorized alien; or

(C) Three or more offenses - \$3,300 to \$11,000 per unauthorized alien. Further, criminal charges may be brought against any person or entity who engages in a "pattern or practice" of knowingly hiring or continuing to employ unauthorized workers. In such cases, the employer may be enjoined or fined up to \$3,000 per unauthorized alien and/or imprisoned for up to six months.

Impact

The government claims the no-match regulation will discourage future illegal immigration. In reality, it will jeopardize the employment of about 10 percent of the legal workforce. The impact on Hispanic workers could be especially devastating.

The White House had delayed the original regulations while Congress debated comprehensive immigration reform. When the immigration legislation failed, the Administration released the regulations, hoping to punish employers and their workers so that passage will be more likely in the next Congress. The new regulations will take effect unless Congress and the White House turn them back.

Alternatives have been proposed in Congress. The Administration should suspend the "no-match" effort until alternative, more accurate, databases are in place and employers have an efficient way to correct data errors and to obtain status confirmation.

TEIR believes that the White House and Members of Congress should view employers as partners in economic growth and job creation instead of as adversaries in the immigration debate. The no-match regulation treats employers as criminals. TEIR suggests that collective action by employers can reverse this approach.

By clicking on the link below, you'll be able to send a letter to President George Bush and your Representative and Senators in Congress asking them to support legislation reversing the No-Match regulation.

<http://www.txeir.org/alerts.aspx>

Thank you for your support.