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Immigration and Employment Update: Changes in I-9 Regulations and Information Sharing

By Nancy-Jo Merritt

On June 9, 2006, the Department of Homeland Security (DHS) issued a press release stating that it will publish two new regulations, which it says will help businesses comply with employment verification requirements. One regulation will allow U.S. businesses to digitize the I-9 employment forms, which currently may be stored in their original form, electronically, or in microfiche. The second regulation deals with the Social Security Administration (SSA) "no match" letters. According to DHS, the regulation "reviews the legal obligations" of employers upon receipt of "no-match" letters and describes a "safe-harbor" procedure for employers to follow. DHS states that if the regulation is followed in good faith, it will provide certainty that the employer will not be found in violation of its legal obligations. We will provide additional information on the prospective regulation as soon as it is published. Both regulations will be "interim" regulations, meaning that they will take effect upon publication.

In addition to the new regulations, DHS has also announced that it will ask Congress to increase the authority of the SSA to share information about the "no-match" letters with DHS worksite enforcement agents, allowing DHS to learn which employers are receiving "no-match" letters and identifying companies with the highest rate of immigration fraud. Secretary Chertoff said that, identifying businesses that are habitually flagged for submitting mismatched social security numbers (SSNs) would bolster DHS worksite enforcement efforts. He said, "Congressional approval of this legislation is critical to ensuring that U.S. businesses hire legal workers."

We remind our clients that it is important to always respond to the SSA "no-match" letters, and it is critical to have a consistent policy of providing notice to employees whose SSNs have been identified as "no-matches." The SSA letters exemplify the ambiguities and uncertainties inherent in the I-9 process and the fine distinctions employers must make in dealing with employment verification and avoiding citizenship status discrimination. While advice from DHS that provides a "safe-harbor" response to SSA "no-match" letters will be welcome, permission by Congress allowing intrusion by DHS into social security records will place employers dealing with the difficulties of document review and I-9 management in an unenviable position.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A., (1974) J.D., (1978) from Arizona State University.



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