



October 16, 2007

Judge Blocks Enforcement of the Department of Homeland Security's Social Security "No Match" Rule

U.S. District (San Francisco) Judge Charles Breyer has decided in favor of employers, barring enforcement of a Department of Homeland Security (DHS) regulation concerning federal "no match" letters.

In our last e-mail alert we described in detail the rule, which would have required employers to terminate employees who could not resolve a Social Security number mismatch within 90 days. At issue was whether the government's attempt to crack down on illegal immigration by issuing Social Security mismatch letters would unfairly burden small businesses and compromise the liberties of incorrectly targeted, legal U.S. workers.

Judge Breyer's opinion states that the rule likely would create unnecessary hardships, like additional administrative costs and the possibility of penalizing innocent workers. The injunction will remain in effect and the DHS's rule will not be enforced, pending the outcome of the lawsuit brought by the AFL-CIO and the ACLU.

What should your company do when it receives a no-match letter?

If your business is one of the hundreds of thousands who receive Social Security no-match letters, you should take the following steps until the underlying lawsuit is decided or the injunction is lifted:

- Check your records and, if necessary, correct any errors;
- If there is no error in the employment records, notify the employee of the no-match letter;
- Do not require a new I-9 be completed if your employee does not clarify the mismatch; and
- Do not take adverse employment action against an employee because he or she receives a no-match letter or cannot clarify the mismatch.

For more information, please contact a member of our employment group:

Lisa Aguiar,
Practice Group Chair

Robert Coelho

Kathryn Meier

Jonathan Hicks

Vanessa Inman

Derek Austin



EMPLOYMENT
LAW GROUP