

FEDS SET FOR WORKFORCE CRACKDOWN

8/07

Effective September 14, 2007, the Department of Homeland Security (DHS) will impose sweeping new regulations tightening workforce eligibility procedures for employers. Under the new regulations, the federal government would require employers to fire workers who cannot verify their work eligibility and whose social security number (SSN) does not match federal records. This stepped up enforcement follows the collapse of comprehensive immigration reform efforts in Congress and intense public criticism; some would say hysteria, on the role and impact of undocumented workers in the economy. These new regulations follow frequent pledges by the Administration to bring record enforcement proceedings against employers across the country in the months ahead.

The new regulations impose an explicit set of requirements and liability on employers who receive social security no-match letters. Under federal law, it is illegal to knowingly employ an undocumented worker or to continue to employ any worker when the employer knows the worker is not eligible to work in the United States. The DHS regulation clarifies “knowing” to include employers who may have “constructive knowledge” that the worker may not be eligible to work in the United States. A social security no-match letter, according to DHS, can be considered constructive knowledge if the employer does not take specific steps to rectify the no-match.

If an employer receives a no-match letter for an employee, the new DHS regulations will require the employer to take the following steps to avoid liability.

- First, the employer must check its records on file ensure that the alleged no-match is not in fact a clerical error. If there is a clerical or transcription error, the employer must correct it and inform DHS or other appropriate agency within 30 days of receipt of the no-match letter.
- If a check of the employee file confirms that the employee’s SSN is the same as the number in the no-match letter, the employer should request that the employee verify that the information in the employee file is correct.
- If the information is correct, the employer should advise the employee to pursue the matter personally with the appropriate federal agency such as the Social Security Administration. This action should be taken within 30 days of receipt of the original no-match letter.
- When the employee presents information to the employer confirming the social security number or providing a new number, the employer must confirm the validity of the number with the Social Security Administration. Employers may verify an SSN by calling the Social Security Administration’s verification line at 1-800-772-6270 (weekdays from 7 a.m. to 7 p.m. EST).
- The employer and the employee have 90 days from receipt of the no-match letter to correct and verify the information. If at the end of the 90 days the

matter remains unresolved, the employer has an additional three days to complete a new I-9 form for the employee. However, the employee may not use any document containing the social security number identified by the no-match letter, nor may they use a receipt for application for a new identify document to satisfy the I-9 requirements.

An I-9 form is an employer's Employment Eligibility Verification form. After an employer and employee complete a Form I-9, it is retained by the employer and made available to DHS investigators on request, such as during an audit.

- If after completing the new I-9 process the employee's information cannot be verified, DHS indicates that an employer must choose between terminating the employee or risk potential liability for employing an unverified worker.

The DHS suggests that employers keep detailed notes and documentation of their efforts to resolve employee no-match letters. Employers may want to consult with qualified counsel on the appropriateness and types of documentation they should maintain.

The issue of employment verification has been simmering for several years. Business community and employer groups lobbied Congress to adopt comprehensive immigration reform measures that would have balanced the need for qualified workers with stepped up enforcement measures. Despite making this a core part of his domestic agenda, President Bush was unable to overcome deep policy divisions with Congress to address these issues. As a result, politics has driven stepped up enforcement measures without subsequent immigration reform to boost the availability of qualified, documented workers. While nearly everyone agrees that the system is broken, the consensus stops there.

The only other certainty is that employers now face stricter requirements and stepped up enforcement. Be prepared.

Additional resources:

[Federal Register Notice of Regulation](#)

[Social Security Administration Employer Verification](#)

[Social Security Administration's Online Verification](#)