



SSA Mis-Match Letters

Insights

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A newly proposed rule from the Department of Homeland Security (DHS) is sending a clear signal that receipt of the Social Security Administration (SSA) mismatch letter serves as constructive notice to the employer that persons named in the mismatch list are almost certainly not authorized to work in this country. On June 14, DHS published a proposed rule in the Federal Register setting forth procedures and obligations for employers who receive the SSA mismatch letter. There will be a 60-day period for submission of comments on the procedures and time limits DHS has set forth.

Up until about two months ago, employers faced little risk in ignoring the mismatch letter because INS had repeatedly stated that an employer should not question the employment authorization of a worker who showed up on the mismatch list. That changed on April 20 when DHS Secretary Michael Chertoff announced that workers who repeatedly appear on the mismatch letter are almost certainly illegal workers.

The rule gives employers 14 days to check records and report back to SSA or DHS regarding any necessary corrections. If records cannot be corrected within 14 days, the worker must be instructed to go to the local SSA or DHS office to try to fix the problem. If the employee does not return with new or corrected information within 60 days of the employer's receipt of the mismatch letter, the employer then has three days to complete a new I-9 form. The new I-9 form cannot use the SSN or document that was originally reported as suspect, and the employer must validate any new number or document using the SSA or DHS online verification systems. Of course, in nearly all cases, an illegal worker will not be able to present valid documents in order to complete the new I-9 form. Such a worker must be terminated if the employer is to avoid risk of severe fines and potential criminal liability.

Many aspects of the proposed rule's implementation remain unclear. Presumably, the final rule will address what employers should do with respect to SSA mismatch letters received before the rule takes effect. It is also unclear whether or not employers can require employees to correct problems in less than 60 days.

DHS has clearly increased its interior enforcement efforts. Raids, arrests, concentrated efforts on deportation, and increased I-9 audits all demonstrate a renewed commitment to enforcing our nation's immigration laws. The proposed rule gives DHS another weapon to bring to bear against employers who have unwittingly employed falsely documented workers whose documents "reasonably appear to be genuine on their face." As a result, it is more important than ever before to

reasonably appear to be genuine on their face. As a result, it is more important than ever before to ensure that your I-9 compliance is as good as it can be. In addition, employers need to focus upon how to respond to SSA mismatch letters now and in the future. For help with these and related issues or help in drafting a comment on the proposed rule, contact your local Fisher Phillips attorney.