



Judge Issues Preliminary Injunction in No-Match Litigation

Insights

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On October 10th, the U.S. District Court for the Northern District of California issued a preliminary injunction blocking implementation of the Department of Homeland Security ("DHS") rule that would use Social Security mis-match records as a tool for immigration enforcement.

The practical effect of the preliminary injunction is twofold in that DHS is prevented from sending the 2007 SSA mis-match letters it intended to send out starting September 4, 2007 and that it also prohibits further implementation of the mis-match rule until the court issues a decision on whether or not the rule was properly promulgated.

While this is very good news for the estimated 140,000 employers who were about to receive the mis-match letter, all employers should continue to monitor this situation. Even if the government loses the case on the merits, it is more than likely that DHS will seek to republish its final rule following the instructions it will receive from the Court in its ruling on the merits. As a result, it remains vitally important that employers take appropriate steps to treat with employees listed on prior mis-match letters and at the same time take timely action to improve I-9 compliance and reduce the risk of audits.

ICE Increases Work-Site Enforcement

Employers should be concerned about last week's reports that Immigration and Customs Enforcement ("ICE") arrested more than 1,300 aliens in Southern California and Nassau County, New York. ICE is not only arresting illegal aliens in their homes, but it is also using warrants to apprehend suspects at work.

Employers are reporting that when ICE executes the arrest warrant at work the agents are also requesting the I-9 form for the suspects. Should the agents find defective I-9 forms, ICE may contact the employer to audit all of the employer's I-9 forms. Employers should carefully assess their I-9 forms to ensure both past and continuing compliance.

For many employers, an audit of randomly chosen forms may be a prudent way to gauge compliance quickly. Employers with compliance issues should consider a more thorough audit or implementation of an electronic solution with failsafe features. For more information on our Electronic I-9 Solution, [please click here](#).

Increased Processing Times for Employment-Based Permanent Residence Petitions

Employers should expect a delay in the processing times for employment-based permanent residence applications. In July and August, U.S. Citizenship and Immigration Services ("USCIS") received 2.5 million applications including 300,000 employment-based adjustment of status cases. Michael Aytes, Associate Director of USCIS domestic operations, stated, "The surge in applications will significantly affect our processing times. It could take years to process all the applications and issue all the visas." Considering the expected increase in processing times for these applications, it is important that workers timely file for extensions of their work authorization documents and travel documents because the processing times for these applications will likely increase as well. Should you require assistance with the monitoring of status documents, please contact us immediately.

DOL to Increase Audits for PERM Applications

On October 1, 2007, the Department of Labor ("DOL") announced that the permanent labor certification backlog is eliminated and that Backlog Elimination Centers will begin a transition and shutdown phase. DOL employees working at Backlog Elimination Centers will be transferred and assigned to conducting PERM application audits. William Carlson, Foreign Labor Certification Division Chief, said: "DOL plans to move the resources it was expending on the now closing Backlog Elimination Centers to concentrate on audits and inspection (including the long-promised random audits) relating to PERM applications." Employers should expect an increase in audits and ensure that all supporting documentation is properly maintained. In addition, employers should remain consistent regarding the minimum job requirements for a particular position. Since PERM applications are filed electronically, DOL can now review employers' previous applications to audit the minimum requirements. Please let us know if you have any questions regarding PERM application audits.

H-2B Quota Reached for First Half of FY 2008

On October 1, 2007, USCIS announced that the H-2B quota was reached for the first half of FY 2008. September 27, 2007 is the "final receipt date" for new H-2B worker petitions requesting employment start dates prior to April 1, 2008. It remains unclear whether Congress will extend the returning worker provision to allow returning workers not to be counted against the quota. As a result, some employers are continuing the temporary labor certification process so that if Congress extends the returning worker provision the employer will already have an approved temporary labor certification. Effective April 1, 2008, 33,000 H-2B visas for the second half of FY 2008 will be available, and employers may start the application process on December 1, 2007. Please contact your immigration attorney as soon as possible to begin this process.