



# **Social Security Administration Will Not Issue Mis-Match Letters This Year**

Insights

11.14.07

Yesterday, Mark Hinkle, a spokesman for the Social Security Administration ("SSA"), reported that SSA will not issue mis-match letters to employers this year based on the 2006 tax year information. Hinkle stated that SSA decided not to send the mis-match letters this year as result of the current litigation challenging the implementation of the Department of Homeland Security ("DHS") rule which would use the Social Security mis-match records as a tool for immigration enforcement.

On October 10, 2007, a federal court in California issued a preliminary injunction preventing DHS and SSA from implementing the new rule entitled Safe-Harbor Procedures for Employers Who Receive a No-Match Letter. The court enjoined SSA from sending out the mis-match letters because the letters were to include DHS language threatening possible criminal and civil liability for employers that failed to respond to the letters. Although this injunction only prevents SSA from sending mis-match letters that include the DHS liability language, Hinkle stated that SSA believes it is running out time to rewrite the notice without the DHS liability language and still expect employers to correct the information. As a result, employers should not expect to receive any mis-match letters until Spring of 2008.

Although, this is good news for the estimated 140,000 employers who were about to receive mis-match letters, all employers should continue to take steps to improve their I-9 compliance and reduce the risk of audits. 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 Fisher Phillips' Electronic I-9 Solution, [please click here](#).

## **Arizona Immigration Law Challenged**

Last Summer, Arizona passed an immigration-related law that requires a 10-day suspension of an employer's business license for a first violation of "knowingly" hiring an illegal worker and requires revocation of the license for a second offence. The law, which takes effect January 1, 2008, also requires all Arizona employers to use the federal E-Verify online system to confirm identity and employment eligibility. This law is intended to curb illegal immigration by targeting the employers who hire illegal workers. Today, a federal court began a hearing on the merits of a challenge to the law's constitutionality. If the federal court upholds the Arizona law, we expect to see similar bills introduced in other states.

Because so many states are enacting immigration-related legislation affecting employers, it is becoming increasingly important for employers to know what legislation applies in the states they do business. This is especially the case for employers who operate in more than one state. We are following developing legislation across the nation in this emerging area, and we are pleased to make available a survey of state immigration laws affecting employment.

### **All Federal Agencies Must Now Use E-Verify**

As of October 1, 2007, all federal departments and agencies are required to verify their new employees using the E-Verify system. E-Verify is a free program that allows employers to electronically verify the name, date of birth, social security number, and employment eligibility of new hires. Federal departments and agencies have been instructed to encourage their existing and future contractors to use E-Verify; however, it is not yet mandatory for federal contractors to use this system. As part of the enforcement initiatives announced in August, DHS may try to publish a final regulation by the end of the year that would require all federal contractors to use E-Verify.

Some states have enacted legislation requiring certain employers to use the E-Verify system as well. Please contact us if you have any questions about the E-Verify system or whether your company is required to use it.