



DHS Appeals Injunction to Social Security No-Match Rule

Insights

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On December 5, 2007, Department of Homeland Security ("DHS") Secretary Michael Chertoff released a statement confirming that DHS filed an appeal to the 9th Circuit Court of Appeals requesting that the court lift the injunction against implementing the DHS no-match rule. On October 10, 2007, a federal court in California issued a preliminary injunction preventing DHS and the Social Security Administration ("SSA") from implementing the rule entitled Safe-Harbor Procedures for Employers Who Receive a No-Match Letter. The court enjoined SSA from sending out the no-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.

Secretary Chertoff confirmed that DHS is not abandoning the no-match rule. Instead, DHS is going to issue a supplement to the rule that addresses the court's concerns over its implementation. DHS's action to appeal the injunction and republish a revised no-match rule demonstrates that DHS is serious about implementing the no-match rule and prosecuting employers employing illegal aliens. Employers should be aware that although the "safe harbor" provision is not effective at this time, DHS will continue to use the no-match letter as an enforcement tool. Please contact your Fisher Phillips attorney if you have any questions.

Contractor Forfeits \$2 Million for Subcontractor's Immigration Violations

A commercial drywall company, Spectrum Interiors, Inc., and its owner pleaded guilty to conspiracy to hire illegal aliens in order to maintain a reliable workforce. The drywall company's subcontractor employed illegal aliens and used them on the company's construction projects. Investigators began looking into the company's subcontracting practices after an ICE raid of several construction sites in November 2006. As part of the plea agreement, the drywall company agreed to forfeit \$2 million in earnings gained from 2002 to 2006.

This case is another example of an employer being held liable for knowledge that a contractor's workers are illegal. Prudent employers should require contractors to ensure proper documentation of all workers employed on their projects.

Recent Immigration Enforcement Efforts

DHS and U.S. Immigration and Customs Enforcement ("ICE") are continuing their efforts to prosecute employers who knowingly employ illegal aliens. Examples of recent ICE enforcement actions are set forth below.

Fishing Farm Forfeits \$6.9 Million for Employing Illegal Aliens

The owner of a Norfolk, Virginia fishing company and his daughter pleaded guilty to repeatedly hiring illegal aliens. Between 2003 and 2007, the company employed approximately 126 illegal aliens to work on scallop fishing boats. The company continued to employ these illegal aliens after receiving Social Security Administration no-match letters and allegedly instructed its workers to purchase "good" fake identification. Under the terms of the plea agreement, the company will forfeit \$6.9 million in profits and pay a \$500,000 fine. The owner will pay a \$100,000 fine and face up to six months in prison, while his daughter will pay a \$50,000 fine and face up to 12 months in prison.

Apple Producer Pleads Guilty to Hiring Illegal Aliens

An officer of Lochirco Fruit and Produce Inc., a company that produces candied apples in Missouri, pleaded guilty to hiring illegal immigrants to perform seasonal labor. It was reported that the company's officer began to hire illegal aliens because the company required an influx of workers each fall to operate the orchard. This individual now faces a sentence of up to five years in prison and a fine of up to \$250,000. The company pleaded guilty to a misdemeanor count of hiring illegal aliens and agreed to forfeit \$500,000 in earnings and to pay a fine of \$3,000 for each illegal alien it employed, for a total of \$99,000.

Employers should be aware that ICE continues to investigate and raid facilities where it suspects illegal aliens are employed. ICE's enforcement activity is yet another reminder of the importance of I-9 compliance.