

# eLABORate

August 23, 2007

## NEW FEDERAL REGULATIONS REQUIRE EMPLOYERS TO PAY CLOSE ATTENTION TO SOCIAL SECURITY ADMINISTRATION “NO MATCH” LETTERS

The Department of Homeland Security (“DHS”) and the Social Security Administration (“SSA”) are taking a tough stand on immigration enforcement. As a result, employers will have to pay close attention to so-called “no-match” letters from SSA, and tailor their responses to new regulations, or risk civil and criminal liability under federal immigration laws.

DHS recently has published a final rule setting forth safe harbor procedures for employers who receive a no-match letter. The new regulation reiterates existing law requiring employers to verify the employment eligibility of the workers they hire. In addition, it clarifies the steps that employers should take to resolve social security mismatch issues. Under the new rules, which take effect on September 14, 2007, an employer must take “reasonable steps” to resolve a SSA no-match, or else risk liability for knowingly employing an unauthorized alien.

If an employer fails to take reasonable steps, DHS may use the no-match letter in an enforcement proceeding as evidence that the employer had “constructive knowledge” that the employee is an unauthorized alien. Under the safe harbor provision, employers can avoid having the no-match letter used against them by taking the following steps:

1. Promptly check company records to ensure that the social security mismatch was not the result of an error on part of the employer. If an internal error was the cause, this should be reported to SSA within 30 days of receipt of the letter.
2. If step one does not resolve the problem, the employer must ask the employee to confirm the accuracy of the employer’s records.
3. If the discrepancy still is not resolved, the employer must ask the employee to resolve the issues with SSA. The employer should inform the employee that the matter must be resolved within 90 days of the employer’s receipt of the no-match letter.
4. If the employer was able to successfully resolve the mismatch, the employer should ensure that all of the instructions in the SSA letter have been followed. The employer should also verify that the error has been corrected by using the SSA’s social security number verification service and retain a record of the date and time of verification.
5. If none of the foregoing measures resolve the matter within 90 days of receipt of the no-match letter, the employer should, within three days, complete a new I-9 Form as if the employee in question were newly hired. However, no document incorporating the questionable social security number may be used to

verify the employee’s authorization for work. Additionally, the employee must present a document that contains a photograph in order to establish identity, or both identity and employment authorization.

If the employer cannot confirm that the employee is authorized to work after following these safe harbor procedures, the employer risks liability for violating immigration laws by knowingly continuing to employ unauthorized workers.

DHS has developed a comprehensive interactive safe harbor information center which employers may utilize to answer no-match related questions or inquiries. Please contact Brandon Davis at [davisb@phelps.com](mailto:davisb@phelps.com) or at (504) 584-9312, or Tommy Siler at [silert@phelps.com](mailto:silert@phelps.com) or at (601) 360-9357, for more assistance in complying with this new regulation.

## eLABORate

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