

THINK TWICE BEFORE YOU TOSS “NO-MATCH” LETTERS AS JUNK MAIL!!!

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The Department of Homeland Security (“DHS”) issued new regulations on August 10, 2007, that are designed to make it more difficult for illegal immigrants to use phony Social Security numbers to obtain employment. These regulations also clarify an employer’s legal obligations under the current immigration law and provide additional guidance on the steps employers must take after receipt of an employer “no-match” letter from DHS. Social Security Administration (“SSA”) intends to mail “no-match” letters to approximately 140,000 employers around the country between September 4, 2007, and November 9, 2007, affecting approximately 8 million employees.

Since 1993 thousands of employers have periodically received “no-match” letters from the SSA. These letters generally provide employers with a list of employees whose names or Social Security numbers on their W-2 Forms do not match SSA records. These “no-match” letters represent an attempt by SSA to correct errors in its database and to properly credit employees’ earnings.

The new regulations, which go into effect on September 4, 2007, outline what employers should do if notified that an employee’s name and Social Security number do not match governmental records.

Many employers who have received these letters in the past have engaged in the standard protocol - ignore the letter. However, under the new regulations, ignoring these letters will be detrimental to your business. Failure to respond to a “no-match” letter serves as evidence that an employer knowingly hired illegal immigrants, and may subject the employer to civil fines and possible criminal charges.

LESSON: Employers should consider the following steps upon receiving a “no-match” letter. First, ensure within 30 days that there was not a clerical error, such as a mistyped name or number. Second, check the accuracy of the information with the employee, and then, if necessary, ask him or her to contact the SSA to resolve the discrepancy. Third, if the discrepancy is resolved then the employer should correct the information with the SSA, but if the discrepancy is not resolved within approximately 90 days, the employer should consider terminating the employee or risk

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being held liable for violating immigration laws. However, employers must be especially cautious in taking any action against listed employees given federal and state prohibitions against national origin discrimination and the protections for legally-authorized workers under federal immigration law.

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