

“No-Match” Letters Likely to Resume Employers: Take Steps Now to Avoid Being in “Constructive Knowledge”

The Social Security Administration’s (“SSA”) “no-match” letters have presented a source of great concern for workers and employers alike. The SSA sends out “no-match” letters to employers if a discrepancy exists between an employee’s name and social security number. The letter urges the employer to verify its records within a specified time period but provides little further guidance. In fact, the letter advises employers that adverse action against an employee could constitute discrimination. On the other hand, immigration law makes it unlawful for an employer to employ an individual with knowledge (actual or “constructive”) that the individual is unauthorized to work. Penalties consist of hefty fines, possible imprisonment, and/or asset forfeiture.

Last year the Department of Homeland Security (“DHS”) propagated a new policy that would allow it to use an employer’s receipt of a “no-match” letter as evidence that the employer has “constructive knowledge” that an employee is unauthorized to work. A lawsuit brought by the AFL-CIO resulted in a temporary suspension of the policy and a suspension of SSA “no-match” letters until DHS provided the court with additional justification for the policy. However, this injunction may soon come to an end, because

DHS has proposed a new rule in which DHS elaborates on the legal reasoning behind its policy, but leaves the policy unchanged. As the issuance of SSA “no-match” letters will likely resume in the near future, employers must be prepared to take timely action to avoid being found in “constructive knowledge” and being assessed significant fines and penalties.

For assistance with drafting or reviewing your company policies surrounding this topic to ensure compliance, please contact me at irybalnik@ftwlaw.com or (508) 532-3512.

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