



ICE NO-MATCH REGULATIONS

AUGUST 2007

The final rule for the ICE No-Match regulations will go into effect September 14, 2007. The regulations provide employers with guidance on how to deal with the receipt of a No-Match letter from either the Social Security Administration (SSA) or from the Department of Homeland Security (DHS). The new regulations expand the definition of "constructive knowledge" as it pertains to the employee's employment authorization. A "safe harbor" is provided to employers who have followed the regulations and are subsequently targeted for an audit.

The regulations require that employers meet two deadlines in order to avail themselves of the "safe harbor" provisions. Upon receipt of the no-match letter from either the SSA or DHS the employer has thirty days to verify the accuracy of the letter. In addition, the employer is expected to document any action taken in response to the receipt of the No-Match letter. If the No-Match letter is accurate, then the employer is expected to advise their employee to resolve the issue with the SSA

or DHS within ninety of the receipt of the letter. After the ninety day period has elapsed, the employer is expected to re-verify the employee's work authorization. The regulations specify how the re-verification is to be completed. However, there are situations where the "safe harbor" provisions will not be available to the employer.

The "safe harbor" provisions will not be available to an employer who knows that their employee requires sponsorship for a labor certification or a visa petition and the employee is not authorized to work; or the employee admits to their employer that they are not legally in the United States; or if an employee makes an inconsistent request based on the information they have provided during the employment verification process. For more information, contact Sanford Posner in our Immigration practice at posner@elarbeethompson.com or any attorney at Elarbee Thompson.