

October 2007

Federal Judge Halts DHS "Safe-Harbor" Provisions

On October 10, 2007, the U.S. District Court for the Northern District of California issued a preliminary injunction halting the implementation of the safe-harbor provisions contained in the Department of Homeland Security's (DHS) Final Rule. In granting the injunction, the Court questioned whether DHS overstepped its authority or acted in an arbitrary and capricious manner.

As discussed in our [previous Client Alert](#), these "safe-harbor" provisions outlined specific steps the employer must take when responding to a Social Security Administration (SSA) No-Match Letter. Employers could avoid fines and penalties if they fully complied with the provisions.

Prior to the injunction, SSA was prepared to issue some 140,000 No-Match Letters containing references to DHS "safe-harbor" provisions. The injunction prevents SSA from issuing these Letters. However, SSA is adamant that it will issue 2006 No-Match Letters. It is expected that SSA will issue traditional letters that do not reference the Final Rule.

At the same time, DHS has vowed to use every available tool to enforce the immigration laws. It is possible that DHS will use the No-Match Letters as one of these tools.

The end result for employers is continued uncertainty regarding proper response to No-Match Letters. In the wake of this injunction, employers should halt implementation of the safe-harbor provisions. Instead, employers should (1) perform I-9 audits and train all staff appropriately; (2) review current protocols for completing an I-9; (3) utilize E-Verify or the Social Security Number Verification Service (SSNVS); and, (4) develop policies to ensure timely response to No-Match Letters. Employers must make a good faith effort to respond to No-Match Letters. Employers are reminded to seek legal advice before terminating an employee based solely on the receipt of a No-Match Letter.

We will continue to monitor these issues and inform you of developments.

Should you have any questions, contact [Stuart Brock](#) in our Charlotte office (704-331-4975 or sbrock@wcsr.com), the Womble Carlyle Labor and Employment attorney with whom you already work, or any one of the [Womble Carlyle Labor & Employment attorneys](#).

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