



# Employment Edge 75th Edition (Immigration Issue) - Special Alert: Federal Judge Blocks “No-Match” Regulation

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Special Alert: Federal Judge Blocks "No-Match" Regulation

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A federal judge in San Francisco issued an order temporarily blocking the Department of Homeland Security from implementing its new "No-Match" Rule. The order will not only delay enforcement of the new Rule, but also puts on hold the government's plan to send 140,000 No-Match letters to employers between September 4 and November 9 this year. These letters would affect several million employees. The judge will further consider the case against implementation of the Rule on October 1; the No-Match Rule will have no legal effect until at least that date.

We recently reported to you that on August 15, 2007, the Department of Homeland Security ("DHS") published the final "Safe Harbor Procedures For Employers Who Receive A No-Match Letter" regulation in the Federal Register. This Rule sets forth recommended procedures for employers to follow after receiving a No-Match Letter from the Social Security Administration ("SSA") or a Notice of Suspect Documents from DHS. If the Rule is implemented, following these recommended procedures would help employers avoid civil and criminal liability for employing an unauthorized worker.

The final No-Match Safe Harbor Rule was scheduled to take effect on September 14, 2007. The AFL-CIO and affiliated labor organizations, supported by lawyers from the American Civil Liberties Union and the National Immigration Law Center, filed a lawsuit on August 28 against U.S. Immigration Customs and Enforcement ("ICE"), DHS, and SSA. The lawsuit asks the court to immediately and permanently block the No-Match Rule from taking effect and to declare the Rule invalid. The suit alleges that the DHS and SSA have exceeded their authority in enacting the Rule and in announcing plans to include a summary of the Rule in No-Match Letters that were to be sent to employers beginning today.

The government is now not expected to send out any No-Match Letters until there is further direction from the federal court on the issues raised in this lawsuit. Nothing in the court's order or elsewhere, however,



prohibits an employer from following the procedures set out in the Rule when the employer receives a No-Match Letter.

Gray Plant Mooty is staying abreast of developments in immigration law enforcement, including developments relating to the No-Match Rule. We plan to notify you again when there is meaningful clarification as to this Rule and the government's expectations of employers. In the meantime, if you need assistance with any aspect of workplace immigration legal compliance or enforcement, please contact Mark Mathison, Casey Nolan, or another member of the Gray Plant Mooty Employment and Labor Practice Group.

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