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Special Report for HR Professionals

October 31, 2008
Number 492

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HOMELAND SECURITY FINALIZES “NO-MATCH” RULES EFFECTIVE IMMEDIATELY

INSIDE THIS ISSUE

- 1 Homeland Security Finalizes “No-Match” Rules Effective Immediately
- 3 **Breakthrough Technical Recruiting**
- 3 OSHA “Quick Cards” Help Employee Training
- 4 Be Sure to Vote and Encourage Your Employees to Do the Same
- 4 Subscriptions...

On October 23, 2008, the U.S. Department of Homeland Security (DHS) printed in the Federal Register its final rule for its No-Match process. It identifies what employers can and should do when they receive a letter from the Social Security Administration saying one or more of their employees do not have a match between the employee name and the Social Security number submitted with that name. These are called “No-Match” letters.

www.dhs.gov/xnews/releases/pr_1224771455239.shtm

The final rule is located at

www.dhs.gov/xlibrary/assets/ice_no_match_letter_finalrule.pdf

According to the Department, the “no-match” letter process is designed to weed out employers who seek to exploit illegal labor. On the flip side, it will equip responsible employers with the tools they need to hire and maintain a legal workforce according to the Department.

The Social Security Administration informs thousands of employers every year via “no-match” letters that certain employees’ names and corresponding Social Security numbers provided on the employers’ Form W-2 wage reports do not match SSA’s records. As many as 4 percent of approximately 250 million wage reports the SSA receives each year belong to employees whose names and corresponding Social Security numbers do not match SSA records.

These rules offer a “safe harbor” to employers who follow the proper procedures. They guarantee that U.S. Immigration and Customs Enforcement (ICE) will consider employers who follow these steps to have acted reasonably and will not find that there was a violation of the *Immigration and Nationality Act* by knowingly employing unauthorized workers.

These changes come after a long-running battle in the courts about the appropriateness of such regulations. Up to this time there has been no follow up on “no-match” letters.

[Go to DHS on Page 2](#)

DHS continued from Page 1

Now, to be protected by the safe-harbor provisions, an employer must within 90 days:

- Determine if the error was caused by a clerical mistake and submit a correction within 30 days.
- If no clerical error is found, the employer must ask the employee to visit the Social Security Administration's (SSA) office, taking original or certified copies of required identity documents. This should happen within the next 30 days. Employers have only five days to notify employees of the no-match if the employer conducts its own internal review.
- If the discrepancy is not resolved and the employee's identity and work authorization are not verified, the employer must either terminate the employee or face the risk that DHS will find constructive knowledge of lack of employment authorization.
- If the discrepancy is resolved, the employer must follow special I-9 procedures and update that form by day 93 of the process.

All employers are subject to the newly released "no-match" rules. A "Safe Harbor" is available to employers who follow the procedures.

The new requirements are effective immediately. You can expect it will take the government a few weeks to begin the process. Of course, the greatest volume of "no-match" letters are sent out following the yearly filing of W-2 forms in the first calendar quarter. Since it doesn't matter who receives the "no-match" letter within an employer's organization, you might wish to set up some process for recognizing government correspondence and getting it to the appropriate person with all deliberate speed. The clock starts running when the letter arrives.

Some larger employers may find they have dozens, scores, or even hundreds of employees identified on a list accompanying the "no-match" letter from the SSA. There is no change in the time line just because an employer must investigate a large number of no-match conditions. This rule expects the employer to dedicate whatever resources it takes to resolve every one of the line items within the 90-day period.

DHS believes it has resolved the issues cited by a Federal court that issued a preliminary injunction banning implementation of its procedures over a year ago. It is still possible the Department will face further legal challenges. Until that happens, employers would be well served by planning to implement these new requirements right away. And, as always, your management attorney is a good participant in a discussion about issues such as this.

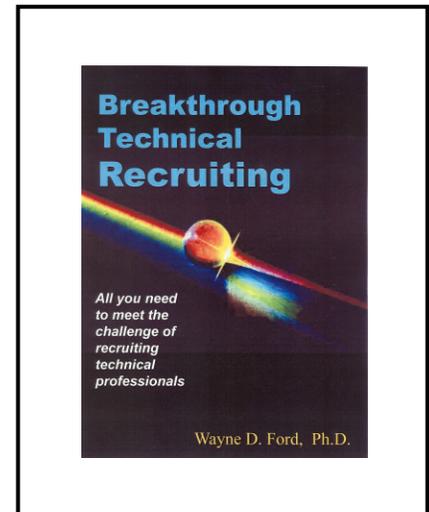
Look for implementation to begin before the end of this year, in advance of the new Presidential administration taking office in January, regardless of which candidate wins.

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<http://www.management-advantage.com/products/Breakthrough.htm>



OSHA "QUICK CARDS" HELP EMPLOYEE TRAINING

The Organizational Safety and Health Administration (OSHA) has developed a series of "Quick Cards" summarizing specific health and safety problems and identifying specific actions to be taken when those problems are encountered. You can locate them at <http://www.osha.gov/pls/publications/publication.AthruZ?pType=Types&pD=6>

Subjects include:

- Ariel Lifts
- Avian Flu
- Cold Stress
- Electrical Safety
- Top Four Construction Hazards

In all, there are 40 different topics covered on these reference cards. They are small enough to be placed at every work station where they apply. They are available in both English and Spanish language versions. And, you can order them on line from the government. They are FREE.

Some of these reference and training aids apply to specific industries and others apply to everyone. Choose the ones you want to use and order them today.

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BE SURE TO VOTE AND ENCOURAGE YOUR EMPLOYEES TO DO THE SAME

Next Tuesday, November 4th, we will have the opportunity to select our national leader for the coming four years. Economic problems are holding most everyone's attention these days, but that will change as we move into 2009 and beyond. There are many employment issues that will be discussed and decided upon during the coming administration, including employee health care benefit programs, payroll tax issues, Medicare and Social Security programs.

It is important that we take the opportunity afforded us by the U.S. Constitution to let our voice be heard. If the race is as close as predicted, every vote will count and could make a major difference.

Please vote. And, encourage all your employees to vote as well. Voting is a precious right for all Americans. Let's take it seriously.

[Editor: Bill Truesdell, SPHR]

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