



Wednesday, October 10, 2007

FEDERAL JUDGE ISSUES PRELIMINARY INJUNCTION BARRING IMPLEMENTATION OF NEW EMPLOYMENT ELIGIBILITY VERIFICATION REGULATIONS PENDING THE COURT'S DECISION ON THE LEGALITY OF THE REGULATION

As reported in the Tindall & Foster, P.C. [Email Bulletin dated August 10, 2007](#), the U.S. Department of Homeland Security (DHS) published new regulations outlining certain steps that must be taken by employers following receipt of a Social Security “no match” letter. Failure to take the required steps, described in the [Tindall & Foster, P.C. Email Bulletin dated August 16, 2007](#), within 93 days following receipt of the “no match” letter could result in a finding that the employer knew or should have known that the employment was unauthorized if the individual is later found to have been unauthorized for employment. Essentially, if the employer does not follow the prescribed steps, the employer can be found to have had *constructive knowledge* of the employee’s unauthorized status, in violation of the Immigration & Nationality Act and regulations prohibiting the knowing hire or continued employment of persons not authorized for employment. The new regulations were slated to go into effect September 14, 2007.

The ACLU Immigrant Rights Project, the AFL-CIO, and others filed suit against the Department of Homeland Security on August 29, 2007, in an effort to have the regulation declared void for want of regulatory authority by the DHS and to obtain an injunction against implementation of the regulation. The plaintiffs requested a temporary restraining order to forestall implementation of the regulation pending a hearing on the merits. The temporary restraining order was issued on August 31, 2007, and was extended on October 1, 2007, by Federal District Court Judge Charles R. Breyer, for an additional 10 days, until October 10, 2007.

On Wednesday, October 10, 2007, the court granted the plaintiffs’ request for a preliminary injunction forestalling implementation of the regulation for a longer period of time, until the court can decide the merits of plaintiffs’ complaint that the regulation exceeds the scope of DHS regulatory authority. It is anticipated that the injunction will consist of a continuation of the prohibitions outlined in the Temporary Restraining Order. This should temporarily continue the existing pause in the mailing out to employers of the special “no match” letters that reference the enjoined regulation and are accompanied or followed by similar DHS inserts.

As always, Tindall & Foster, P.C. will continue to monitor the litigation surrounding the Government’s latest regulatory effort in connection with employment eligibility verification, as well as all developing matters concerning worksite enforcement activity. New information will be made available to our clients via the Tindall & Foster, P.C. web site at www.tindallfoster.com, and, when appropriate, via future Email Bulletins.