



Tuesday, November 27, 2007

U.S. FEDERAL GOVERNMENT FILES MOTION TO STAY PROCEEDINGS IN THE ONGOING SOCIAL SECURITY “NO MATCH LETTER” LITIGATION; ANNOUNCE NEW “NO-MATCH” REGULATORY EFFORT

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.

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. Following a temporary restraining order that issued on August 31, 2007, and was extended on October 1, 2007, the court granted the plaintiffs’ request for a preliminary injunction forestalling implementation of the regulation until such time as the court can decide the merits of plaintiffs’ complaint that the regulation exceeds the scope of DHS regulatory authority, and is thus illegal.

On Friday, November 23, 2007, attorneys for the Federal Government filed a Motion to Stay Proceedings pending a new regulatory effort underway to address concerns raised over the original regulation. In its motion, the DHS stated its intention to conduct new rulemaking proceedings to amend the rule and to include a proper Regulatory Flexibility Act analysis. The DHS motion further stated the Government’s intention to complete the new rulemaking process in March 2008, and requested a stay of the current proceedings until such time as the amended final rule is issued, or until March 24, 2008, whichever occurs first.

The plaintiffs do not concur in the motion, and a hearing has been scheduled for December 28, 2007. If the Government’s motion is granted, further pretrial activities will be suspended until the new regulatory effort is concluded and the court can presumably factor the new regulation into the current proceedings, or plaintiffs may raise new objections in litigation seeking to enjoin implementation of the new, amended rule.

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.