



Complying With Tightened Undocumented Worker Legislation

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The numbers are staggering. In 1960, there were fewer than one million undocumented immigrants, but most experts now estimate that there are at least 10 to 12 million, and immigrants now make up at least 15% of the labor force. No one defends the current system, which by all accounts is broken. Nevertheless, there is no clear consensus on a fix, and the fact remains that illegal aliens will continue to find ways into the U.S. as long as the pull of American jobs exists.

Each year, the Social Security Administration (SSA) sends approximately 150,000 mismatch letters to employers with 10 or more employees. These mismatches are detected after employers report workers' W-2 data to the SSA, and the reported Social Security number and name combination don't match. There are both legitimate reasons (such as mistyped social security numbers) and less legitimate reasons (such as purchased fake social security numbers) for why certain workers may appear on these lists.

On August 15, the Department of Homeland Security (DHS) published final regulations that will require employers to take certain steps if they receive a "mismatch" letter from SSA or the DHS. The regulations were expected to go into effect September 14, 2007 but are now working their way through the court system. It seems clear the changes will be implemented shortly.

The new regulations mandate certain action, within specific, tight time frames, but, in short, they would require employers to terminate the employment of workers who cannot clarify an SSA mismatch within 94 days. Employers that do not take such action would risk prosecution for knowingly hiring illegal immigrants.

It's important to note that, as under current policy, a mismatch letter by itself does not give any indication of an employee's immigration status. As mentioned above, they may simply be mistyped. Therefore, employers who take adverse action against an employee based on a mismatch letter alone may find themselves

in court for violating discrimination and/or labor laws.

The DHS also anticipates the civil fines imposed on employers that knowingly hire illegal immigrants will increase by approximately 25%. In addition, efforts will be made to continue to expand criminal investigations against employers that knowingly hire large numbers of illegal aliens. Arrests by U.S. Immigration and Customs Enforcement for criminal violations have increased from 24 in 1999 to a record 716 in 2006. There have been 742 criminal arrests since the beginning of 2007 (through July 31).

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The bottom line: Given the regulatory, civil, and criminal considerations triggered by these issues, companies should consult with experienced employment and/or immigration counsel, ideally before receiving a mismatch letter, but certainly if and when one is received.

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