


**THOMPSON
HINE**
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**DHS RELEASES ADVANCE COPY OF
SUPPLEMENTAL FINAL NO MATCH RULE**

On October 23, 2008, the Department of Homeland Security (DHS) released an advance copy of its Supplemental Final No Match Rule. As it is currently the subject of litigation, the DHS cannot implement the Supplemental Final No Match Rule until the court lifts its hold. The Supplemental Final No Match Rule, like the initial Final No Match Rule, details steps employers may take when they receive a “no match” letter. The Supplemental Final No Match Rule has no significant changes from the initial rule published in August 2007. In fact, the DHS states in the Supplemental Final No Match Rule that “this final rule republishes the text of the August 2007 Final Rule without substantive change.” Instead, the DHS has added background and analysis supporting the No Match Rule.

“No match” letters advise employers when employees’ names and Social Security numbers do not match the Social Security Administration’s records. If employers take the steps outlined in the Supplemental Final No Match Rule in good faith, the DHS will not use the employer’s receipt of the letter against the employer as evidence that the employer had constructive knowledge of an unauthorized employee.

As background, the initial Final No Match Rule was issued in August 2007. Prior to its implementation, a lawsuit was brought in the U.S. District Court for the Northern District of California. The court stayed the rule, providing the DHS the chance to address the court’s concerns. The DHS will now go back to the court and ask that the stay be lifted so that the Supplemental Final No Match Rule may be implemented.

We will continue to monitor the status of the Supplemental Final No Match Rule and will advise you of the court’s decision.

FOR MORE INFORMATION

If you would like more information about the impact of the new regulations on your business, please contact your primary Thompson Hine lawyer or:

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