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DHS Addresses Controversial Proposals

Department of Homeland Security (DHS) Secretary Janet Napolitano said on July 8 that the DHS will “strengthen employment eligibility verification” by implementing a Bush-era regulation mandating the use of E-Verify by federal contractors and by rescinding the controversial “no-match” regulation.

THE E-VERIFY REQUIREMENT FOR FEDERAL CONTRACTORS

Implementation of the Bush administration’s regulation requiring the use of E-Verify by federal contractors has been postponed four times since it was published, most recently on June 2. Secretary Napolitano explained that the DHS will implement the federal contractor rule because it complements the agency’s “continued efforts to strengthen immigration law enforcement and protect critical employment opportunities.” The rule will require certain federal contractors to use the E-Verify system to confirm identity and work authorization of their employees. This rule will apply to certain contracts awarded on or after September 8, 2009.

THE NO-MATCH SAFE HARBOR RULE

The DHS has chosen to retreat from a Bush-era regulation governing employers’ responses to no-match letters issued by the Social Security Administration. Under this rule, if an employer responded to a no-match letter by following certain steps, the issuance of the letter could not itself be used to show constructive knowledge that the employee(s) identified in the letter were unauthorized for employment. The regulation was blocked by a court order shortly after it was issued and never went into effect. The DHS announced that it will propose a new regulation rescinding the no-match rule.

A SHIFT IN FOCUS

Employers’ responses to these announcements by the DHS should be considered in light of the agency’s new approach to worksite enforcement under the Obama administration. The new administration will concentrate on detection of non-compliant employers, while the Bush administration was perceived as being focused on unauthorized workers.



FOR MORE INFORMATION

Thompson Hine's Immigration practitioners can assist employers in developing best practices to assure compliance with these regulations. If you have questions or would like more information, please contact:

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