



**2008 ACI-NA Human
Resources Conference**

**“Employment
Immigration
Issues Today”**

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April 17, 2008

OVERVIEW OF IMMIGRATION LAW

Federal Requirements

- Employer may not knowingly hire or continue to employ an unauthorized worker. “Knowing” includes both actual and constructive knowledge.
- Employer must verify employment eligibility of all new hires.
- “Grandfather Clause”

State Requirements

Proliferation of state-specific laws governing immigration.



I-9 COMPLIANCE

- Proper Timing and Completion of I-9
- Electronic Verification Systems
- I-9 Retention Requirements
- Electronic Completion, Storage, and Retention of I-9s
- Best Practices
- Penalties



I-9 COMPLIANCE

Proper Timing and Completion of I-9

New Form I-9

Section 1 – Employee must complete on the first day of hire.

Section 2 – Employer must complete by third day after hire.

- Conduct a good faith examination of identity/employment eligibility documents to ensure they are reasonably “genuine” and “relate to” the employee.

Section 3 – Re-verification



I-9 COMPLIANCE

I-9 Retention Requirements

- Must keep I-9s for three years from employee's date of hire OR one year after employee's date of termination.
- Examples

Electronic Completion, Storage, and Retention of I-9s

- Permitted by law



I-9 COMPLIANCE

Best Practices

- I-9 training for hiring managers;
- Periodic internal I-9 audits;
- Tickler system for timely re-verification;
- Employer must ensure that every I-9 section and all fields are thoroughly and timely completed.

Penalties

\$110-\$1100 for each “Paperwork Violation”

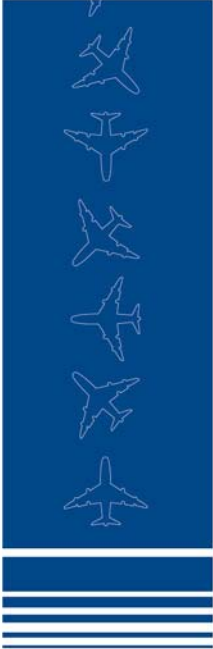


SOCIAL SECURITY NO-MATCH LETTERS

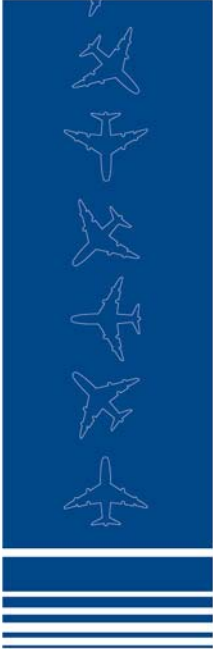
- What is a “No Match” letter?
- What must an employer do if it receives a No Match letter?
- A “No Match” letter by itself is not an indication that the employee is illegal. employer may not take adverse action against the affected employee on the basis of the “no match” letter alone.



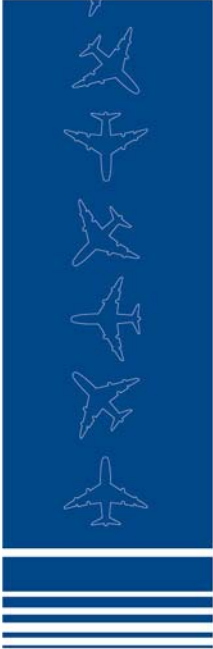
Department of Homeland Security “No Match” Regulation

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- On August 15, 2007, the Department of Homeland Security (DHS) issued a regulation entitled “Safe Harbor Procedures for Employers who Receive a No-Match Letter.” This rule clarifies what is a “reasonable response” to a “no match” letter. The regulation was to become effective September 14, 2007.
 - The regulation adds two examples to the list of items constituting “constructive knowledge.”

Department of Homeland Security “No Match” Regulation

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- “Safe Harbor” Provision: The regulation sets forth steps an employer can follow after receiving either an SSA “No Match” letter or a DHS “Notice of Suspect Documents” letter to safeguard itself from liability on that basis.
 - Steps to take within 30 days of receiving No Match.
 - Steps to take within 93 days of receiving No Match letter

Employer's Bottom Line with No Match Letters

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- The regulation is not currently in effect. A federal district court issued a preliminary injunction on October 10, 2007 prohibiting DHS from enforcing it.
 - Employers must still respond to “no match” letters in a reasonable manner.
 - No amount of “reasonable response” will protect an employer who has actual knowledge that an employee is unauthorized but chooses to ignore it.
 - Penalties: first offense of “knowing” hire can result in a monetary penalty of \$275-\$2200 per illegal alien. The government has also started imposing criminal penalties against companies, executives, and managers where there is a “pattern and practice” of hiring illegal aliens.

Employer's Bottom Line with No Match Letters

BEST PRACTICES:

- The key is to show the government that you have made a “good faith” effort at verifying an employee’s eligibility when you receive a “No Match” Letter.
- Check your records for typos.
- You may choose to verify an employee’s SSN with SSA by telephoning toll-free 1-800-772-6270, weekdays from 7a.m. to 7 p.m. EST. See <http://www.ssa.gov/employer/ssnvadditional.htm> For information on SSA’s online verification procedure, see <http://www.ssa.gov/employer/ssnv.htm> Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any documentation.
- Notify the employee in writing of the discrepancy and ask him/her to provide a valid explanation for the problem and to resolve the issue with the local SSA within a specified time period; Follow-up with the employee at the expiration of the specified time frame. If no resolution, terminate the employee.



Independent Contractor Issues

When is an I-9 required?

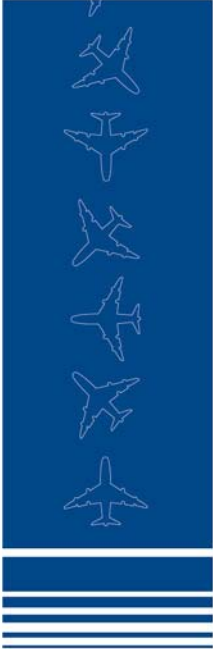
Not a Black-and-White issue.

Will depend on whether the relationship is an employment relationship vs. true independent contractor relationship. Factors considered:

- Who supplies tools/materials?
- Does contractor make services available to the general public?
- Whether contractor works for a number of clients at the same time?



Independent Contractor Issues

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- Whether the contractor has an opportunity for profit or loss as a result of the services provided?
 - Who invests in the facilities for work?
 - Who directs the order or sequence in which the work is done?
 - Who determines the hours during which the work is to be done?

WORKSITE ENFORCEMENT

- ICE Audit
- ICE Raid



CONTACT INFORMATION

**If you have any questions after the session, please e-mail me at:
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