



Immigration Law Update

August 20, 2007

In This Update

- Department of Homeland Security Publishes Final Safe Harbor Procedures

Contact Us

Orange County

38 Corporate Park
Irvine, CA 92606
(949) 261-7700
Partners: Kyle D. Kring,
Kenneth W. Chung

Sacramento

2620 J Street
Sacramento, CA 95816
(916) 266-9000
Partner: John R. Blakely

San Diego

5897 Oberlin Drive
Suite 210
San Diego, CA 92121
(858) 866-0944
Partner: Robert P. Mouglin

Inland Empire

3602 Inland Empire Blvd
Ontario, CA 91764
(909) 941-3050
Partner: Kathleen E. Blakely

Westlake Village

920 Hampshire Road #A-15
Westlake Village, CA 91361
(858) 494-3892
Partner: Ronald J. Skocypec

Las Vegas

7040 Laredo Street, Suite C
Las Vegas, NV 89117
(702) 260-9500
Partner: Robert P. Mouglin

If you would like to be removed from this list, please contact:
info@kringandchung.com

A Message from the Partners

Department of Homeland Security Publishes Final Rules Entitled "Safe Harbor Procedures for Employers Who Receive a No-Match Letter"

On Friday, August 10, 2007, DHS published the Final Rule entitled "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter". The new Rule is effective September 14, 2007. The final rules are generally similar to the draft Rules published for comment in June of 2006. Some of the deadlines were extended. The final rule provides a method for protecting an employer from immigration fines and penalties if the employer follows the "Safe Harbor" provisions even if it turns out that the employee is an unauthorized alien. An employer is still prohibited from knowingly employing unauthorized aliens, so an employer may not continue to employ an individual if the employer obtains actual knowledge during the safe harbor procedure that the individual is an unauthorized alien. Further, the Rules provide a limited defense from governmental claims of discrimination based on the employers action in following the safe harbor procedures. Documentation of every aspect of verification is a critical component of the Safe Harbor defense and will be essential for employers.

DATE: Rule is effective September 14, 2007.

SUMMARY: The following is a summary directly from the new rule.

U.S. Immigration and Customs Enforcement is amending the regulations relating to the unlawful hiring or continued employment of unauthorized aliens. The amended regulation describes the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the Social Security Administration or receives a letter regarding employment verification forms from the Department of Homeland Security. It also describes "safe-harbor" procedures that the employer can follow in response to such a letter and thereby be certain that the Department of Homeland Security will not use the letters as any part of an allegation that the employer had constructive knowledge that the employee referred to in the letter was an alien not authorized to work in the United States. The proposed rule adds two more examples to the current regulation's definition of "knowing" to illustrate situations that may lead to a

Contact Us

Orange County

38 Corporate Park
Irvine, CA 92606
(949) 261-7700
Partners: Kyle D. Kring,
Kenneth W. Chung

Sacramento

2620 J Street
Sacramento, CA 95816
(916) 266-9000
Partner: John R. Blakely

San Diego

5897 Oberlin Drive
Suite 210
San Diego, CA 92121
(858) 866-0944
Partner: Robert P. Mouglin

Inland Empire

3602 Inland Empire Blvd
Ontario, CA 91764
(909) 941-3050
Partner: Kathleen E. Blakely

Westlake Village

920 Hampshire Road #A-15
Westlake Village, CA 91361
(858) 494-3892
Partner: Ronald J. Skocypec

Las Vegas

7040 Laredo Street, Suite C
Las Vegas, NV 89117
(702) 260-9500
Partner: Robert P. Mouglin

If you would like to be removed from this list, please contact:
info@kringandchung.com

finding that an employer had such constructive knowledge. These additional examples involve an employer's failure to take reasonable steps in response to either of two events: (1) the employer receives a written notice from the Social Security Administration (such as an "Employer Correction Request" commonly known as an employer "no match letter") that the combination of name and social security account number submitted to the Social Security Administration for an employee does not match agency records; or (2) the employer receives written notice from the Department of Homeland Security that the immigration status or employment-authorization documentation presented or referenced by the employee in completing Form I-9 was not assigned to the employee according to Department of Homeland Security records. (Form I-9 is retained by the employer and made available to DHS investigators on request, such as during an audit.) The rule also states that DHS will continue to review the totality of relevant circumstances in determining if an employer had constructive knowledge that an employee was an unauthorized alien in a situation described in any of the regulation's examples. The "safe-harbor" procedures include attempting to resolve the no-match and, if it cannot be resolved within a certain period of time, verifying again the employee's identity and employment authorization through a specific process.

Kring & Chung can assist you in immediately implementing procedures to deal with "no-match" letters and will continue to stay on top of the latest immigration issues affecting employers. Should you have any questions regarding this information or immigration law, please contact me at (949) 261-7700.

Kyle Kring

###

** The information contained herein is for informational purposes only and should not be relied upon in reaching a conclusion in a particular area. The legal principles discussed herein were accurate at the time this article was authored but are subject to change with time. Applicability of these same legal principles may differ substantially in individual situations. Please consult an attorney before making a decision in a particular area using only the information provided in this article.

Kring & Chung, LLP is a full-service law firm dedicated to providing quality legal services to individuals and businesses throughout California and the United States. The firm's practice areas include: business and corporate matters, construction, real estate, labor & employment, insurance, estate planning, business succession planning and family law.

ORANGE COUNTY • SAN DIEGO • INLAND EMPIRE • SACRAMENTO • WESTLAKE VILLAGE • LAS VEGAS