

Court Stays Litigation Pending Rewrite of Social Security “No Match” Rule

Last week, the Department of Homeland Security (DHS) abandoned its defense of the Social Security “No Match” rule, asking a federal court to halt litigation while the agency rewrites the rule. Various labor and employment groups had sued to prevent implementation of the rule, which was set to go into effect last September.

In October, Judge Charles Breyer ordered an indefinite delay in the implementation or enforcement of the rule, concerned that inadequacies and errors in the databases used to verify workers’ status made it likely many authorized workers would be terminated. The judge also noted that DHS may have failed to follow required procedures in formulating the rule.

Citing a desire to avoid wasting judicial resources but without acknowledging any defect in the original rule, DHS requested to suspend litigation while it rewrites the rule to address the court’s concerns. The court granted the request and ordered DHS to submit monthly progress reports.

The original rule outlines procedures for employers to follow when receiving notice from the Social Security Administration that a worker’s name and social security number do not match. Notably, it would have required employers to terminate workers within ninety days if the mismatch could not be corrected or risk prosecution for knowingly hiring unauthorized workers.

The government expects to complete its rewrite by March 24, 2008.