NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

ALERT MEMORANDUM

AL 12-07

TO: NCAE Members

FROM: Sharon M. Hughes, CAE*
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DATE: September 4, 2007

SUBJECT: **Court Ruling Temporarily Delays Effective Date Of DHS' No-Match Rule**

Last week, a federal court in San Francisco blocked the Department of Homeland Security's (DHS) no-match rule from taking effect as scheduled. In practical terms, this ruling provides employers with additional time to make sure that they are ready to comply if and when the no-match rule does become effective.

On August 15, 2007, the DHS issued its long-anticipated rule describing how it believed that an employer should respond to a no-match letter received from the Social Security Administration (SSA). In a lawsuit filed on August 29th in the federal district court in San Francisco, a number of labor organizations challenged the rule and asked the court to prevent the rule from taking effect on September 14, 2007. The organizations also asked that the court temporarily block the rule so that the court would have sufficient time and information to consider all the legal issues.

The court ruled on the request for a temporary delay in the effective date of the rule on August 31, 2007. It found that the organizations had raised serious questions about the validity of the rule and that they would suffer irreparable injury if it went into effect. The court therefore indefinitely delayed the effective date of the no-match rule and ordered DHS and SSA not to implement it as scheduled. The court also set an October 1, 2007 hearing date for consideration of the organizations' request to block the rule.

The order blocking the rule is a legal victory, but it is temporary. The court's ruling indicates only that the court wanted to take a closer look at the legal arguments

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than time allowed. It does not necessarily mean that the no-match rule is invalid or that the rule will necessarily be deemed to be invalid in whole or in part. It is very possible that, after more complete consideration, the court will uphold the rule in its entirety. In short, the situation is very fluid and it is difficult to predict the outcome.

In the meantime, employers should continue to prepare for complying with the rule. DHS has taken a rigid approach to the rule and will not necessarily provide employers additional time for compliance if the court rules in its favor. Moreover, DHS will not view favorably employers who do not appear to take seriously their obligation to not employ unauthorized workers. In this respect, it is important for each employer to ensure that its I-9 procedures comply with the law and are being properly implemented. By continuing preparations to comply with the no-match rule even when the status of the rule is uncertain, employers will show that they do take this obligation seriously and they will be ready to comply immediately if the court rules in DHS' favor.