



# LEGAL ALERT

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October 2007

## IMMIGRATION UPDATE:

### SNELL & WILMER

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## Safe Harbor Rule on Hold

A federal judge has issued a temporary restraining order blocking the implementation of the Department of Homeland Security's (DHS) "Safe Harbor Rule." This rule, which was originally set to take effect on Sept. 14, 2007, provided a guide for employers who received social security "no-match" letters. Employers who followed the guidelines could avoid a finding of "constructive knowledge" based on the receipt of such no-match letters. With the temporary restraining order in place, employers find themselves back at ground zero, with no guidance from the federal government on how to handle no-match letters.

However, the temporary restraining order does not preclude Immigration and Customs Enforcement (ICE) from continuing with their raids or eliminate an employer's liability under the Immigration Reform and Control Act which prohibits the employment of undocumented workers. The ruling also does not preclude the Social Security Administration (SSA) from sending out its regular "no-match" letters, without any reference to the DHS regulations. It is unclear whether SSA will begin sending out the nearly 140,000 letters covering 8 million workers that it had planned on mailing around September 1, 2007.

While the court's ruling provides at least a temporary reprieve from the DHS regulations, employers should continue to take the following steps if and when they receive SSA "no-match" letters:



- Immediately check your records to make sure that the mistake is not a simple clerical error made by either the company or the employee;
- If the mismatch does not appear to be the result of a clerical error, contact the employee and instruct him/her to try and resolve the issue directly with the SSA;
- Keep a written record of your actions, including your internal initial review and your notification and request to the employee to resolve the issue.

Unless you have other evidence that leads you to conclude that the employee in question is an undocumented worker, you should not take any disciplinary action against the employee.

## 2009 Green Card Lottery

### 2009 GREEN CARD DIVERSITY LOTTERY APPLICATIONS NOW BEING ACCEPTED

The Department of State is once again holding a green card diversity lottery open to individuals from six geographic regions that typically have lower rates of immigration. There are 50,000 such visas available and the registration period runs from October 3, 2007 through December 2, 2007. In addition to being from one of the identified countries, a successful applicant must meet either the education or work experience requirement of the Diversity Visa (DV) program. The applicant must have either

a high school education (or its equivalent) or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. To obtain more information about this 2008 lottery program, go to [www.state.gov](http://www.state.gov), and then type in "2008 DV lottery" in the keyword search box. Then click on "how and when to apply for the lottery." Each year thousands of aliens obtain green cards through this process.

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**If you need assistance in any of these areas, please contact the Snell & Wilmer attorneys below.**  
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