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CLIENT ALERT

**DHS Requires Federal Contractors
To Verify Employees' Legal Status with E-Verify;
Announces Intention to Rescind "No-Match" System**

On July 8, 2009, the United States Department of Homeland Security ("DHS") approved a regulation mandating that federal contractors use the E-Verify employment verification system to confirm that their employees are authorized to work in the United States. The rule only affects federal contractors who, after September 8, 2009, are awarded a new contract that includes the Federal Acquisition Regulation ("FAR") E-Verify clause. Contractors will be required to use E-Verify to electronically check the work authorization status of all employees working on any federal contract, but may not use E-Verify to verify current employees until the rule becomes effective and they are awarded a contract that includes the FAR E-Verify Clause. (73 FR 67704).

The new web-based verification system, E-Verify, is operated by the DHS in conjunction with the SSA. E-Verify was previously open to employers as a voluntary pilot-program. E-Verify compares I-9 information with information in government databases. Its purpose is to aid employers in complying with federal immigration laws by both helping identify unauthorized aliens and deterring unauthorized individuals from attempting to work illegally. DHS claims that the new E-Verify software is timelier than the "No-Match" procedures and that its process for identifying unauthorized individuals is more accurate, resulting in a more effective method of combating illegal employment.

The new E-Verify federal contractor rule applies to federal solicitations and contract awards. All federal contractors, regardless of their size, with a contract whose performance lasts longer than 120 days and is above \$100,000 will be required to use E-Verify, as will subcontractors that provide services valued over \$3,000. The regulation also applies to those who receive funds under the American Recovery and Reinvestment Act.

DHS simultaneously announced that it will also propose a regulation rescinding the 2007 Social Security “No-Match” Rule. Shortly after the “No-Match” Rule was issued it was blocked by court order. Neither the “No-Match” Rule nor a subsequent Supplemental Final Rule, DHS’s response to the injunction of the original rule, ever went into effect. (See Putney’s October 2008 Client Alert on “No-Match” Letters, available at: http://www.putneylaw.com/cu_103108.html).

Under the old “No Match” system, if an employee provided information on an I-9 Employment Eligibility Verification Form that did not match the Social Security Administration’s (SSA) records, “No-Match” notices were issued to inform the employer of this discrepancy. Employers were then expected to verify information on the employee’s I-9 Form to confirm employee’s authorization to work in the United States. However, heavy delays were associated with the “No-Match” notices and the inconsistencies they identified were often due to typos or unreported name changes.

If you should have any questions regarding E-Verify or the new regulation, please contact us.

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