

No-Match Rule Blocked (Cotton's Week Article - Sept. 7, 2007)

Last week, a federal court in San Francisco blocked the Dept. of Homeland

Security's (DHS) no-match rule from taking effect as scheduled. The court's 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.

As reported in the Aug. 17 *Cotton's Week*, DHS issued its rule on how an employer should respond to a no-match letter received from the Social Security Administration (SSA). In a lawsuit filed on Aug. 29 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 Sept. 14, '07. 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 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 Oct. 1, '07 hearing date for consideration of the organizations' request to block the rule.

The court's ruling only indicates that the court wanted to take a closer look at the legal arguments than time allowed. It does not necessarily mean that the no-match rule is invalid or that the rule necessarily will be deemed to be invalid in whole or in part. It is possible that, after more complete consideration, the court will uphold the rule in its entirety.

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.