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## Vol 84 No 1 | Spring 2009

### Inside this issue:

**FOOD FOR THOUGHT:** Chef Daniel Humm of Eleven Madison Park shares his approach to food. Trained classically in Europe, he's credited with the restaurant's prestigious induction in Relais & Chateaux this year. (p4)

**FOODTRAK:** Many casual dining operations are struggling this year. In Boston, a small but growing restaurant group just opened two units of a new concept and doubled in size. They say they're "crazy" but the units are busy. (p6)

**OTHER STORY:** Culinary arts training program lights up the lives of students who learn entry-level cook and baking skills (front page)

## Guest Column: Ignore "No Match" letters? No way!

**Elise Healy, attorney in the field of immigration law with Dallas-based Spencer Crain Cabbage Healy & McNamara pllc, represents US and foreign companies, ranging from multinationals to start-ups in all types of immigration matters affecting international personnel transfers. She can be reached at [ehaley@spencercrain.com](mailto:ehaley@spencercrain.com).**



U.S. Immigration & Customs Enforcement (ICE) oversees compliance with federal immigration laws, and its worksite enforcement investigations have increased 45-fold since 2001.

Food and foodservice employers, from processing plants to restaurants, risk millions of dollars in fines, asset forfeiture, even jail time if they don't fulfill their compliance duties to verify an employee's identity and work eligibility by completing an Employment Eligibility Verification Form I-9. And one of the biggest risks too many employers take in the verification process is ignoring "no match" letters concerning employee information provided to the Social Security Administration (SSA) and Internal Revenue Service (IRS). ICE views this practice as a sign that the employer's business model depends on the knowing use of illegal workers.

No match letters typically state that the Social Security numbers of certain employees do not match the government's records, and ask that you secure the employee's confirmation or verification. If a letter covers numerous employees, including some who have left the payroll, do not ignore it.

Employers who follow the procedures set forth here to respond to no match letters can avoid liability that might otherwise arise after they receive notice that their employees' employment eligibility may be in doubt. An employer who ignores the letters may later be shown to have had "constructive knowledge" that a worker was not authorized to accept employment in the United States, and may face civil and criminal penalties themselves.

Under existing law, an employer who receives a no match letter can be charged with knowing employment of unauthorized aliens if the workers ultimately turn out to be illegal. An employer's best defense is showing that it was concluded, after exercising reasonable care, that the workers were in fact work-authorized. Existing law, however, provides no detailed definition of "reasonable care." And it specifically prohibits employers from refusing to honor documents "that on their face reasonably appear to be genuine and to relate to the individual." The Department of Homeland Security (DHS, the parent organization of ICE) has drafted new rules clarifying these issues, but the rules have been held up by a federal court challenge.

Until the situation is clarified, employers receiving a no match letter can follow these steps for verifying employee information: (1) check whether there is a typo or transcription error in the employer's own records and if so, correct it; (2) if not, then ask the employees to clear up the discrepancy with Social Security and/or complete a new I-9 form within 93 days; and (3) terminate employees whose identification and authorization to work cannot be resolved and verified by the 93rd day after receiving the no match letter.. An employer who follows these steps will be deemed to have used reasonable care and will be protected from penalties under the Immigration Act if the worker proves to be unauthorized or claims discrimination if terminated.

By contrast, ignoring SSA no match letters could pose significant risk of employer sanctions, fines and penalties. If DHS resolves the court challenge as expected, the government could begin mailing "no match" notices to an estimated 140,000 employers regarding suspect Social Security numbers and immigration documents. Staying within the guidelines and applying them uniformly regardless of race or national origin should provide a valid defense to charges both of constructive knowledge in the event of an I-9 audit or worksite investigation, and of citizenship or national origin discrimination if a suspected illegal immigrant is terminated.

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Monday, August 17, 2009

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## RECIPE: ROASTED GAME HENS

This recipe makes enough to serve 4 people.

For full recipe, please see the current issue's "Food for Thought" section. [Download issue now!](#)

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## PRODUCTS ON PARADE

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