

Facts About the Social Security “No-Match” Letter

UPDATED
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NOTE: *The U.S. Dept. of Homeland Security (DHS) rescinded its “no-match” rule effective November 6, 2009. The no-match rule, therefore, will not go into effect. It is unclear at this time if the Social Security Administration (SSA) will issue no-match letters in 2010.*

■ What is an SSA “no-match” letter?

Each year, employers file a Wage and Tax Statement (Form W-2) with the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to report how much they paid their employees and how much they deducted in taxes from employees’ wages throughout the year. SSA sends a “no-match” letter when the names or Social Security numbers (SSNs) listed on an employer’s Form W-2 do not match SSA’s records. The letter’s purpose is to notify workers and employers of the discrepancy and to alert workers that they are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

■ Who receives a no-match letter?

SSA sends three types of no-match letters: (1) a letter sent directly to workers at their home; (2) one sent to an employer about an individual worker when SSA does not have the worker’s correct home address; and (3) one sent to an employer about multiple employees when at least ten employees during the year, or one-half of one percent of the employer’s workforce, are the subject of a no-match. Each type of SSA no-match letter states that the letter does not imply that the worker or the employer intentionally provided incorrect information about the worker’s name or SSN.

■ Why would a worker receive a no-match letter?

According to SSA, there may be several reasons why information submitted for a worker does not match SSA records, including:

- A typographical or clerical error was made on a Form W-4 or W-2 (such as misspelling a name or transposing a number in the SSN);
- The worker’s name has changed due to marriage or divorce;
- Information provided on the Form W-4 or W-2 is incomplete; or
- The worker’s middle name was transposed (for example, “David Juan Jimenez” instead of “Juan David Jimenez”).

■ Does being named in a no-match letter indicate that a worker is undocumented?

No. For years, the no-match letter itself has stated that it does not “make any statement about an employee’s immigration status.” Of the estimated 17.8 million errors in SSA’s database that could generate a no-match letter, 12.7 million (or over 70 percent) pertain to native-born U.S. citizens.

■ Do no-match letters affect workers’ labor rights?

The no-match letter clearly states that employers should not “take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her Social Security number appears on the list” (emphasis added) and that “[d]oing so could, in fact, violate State or Federal law and subject you to legal consequences.” However, unscrupulous employers do misuse the letter to interfere with organizing campaigns and to retaliate against workers who have been injured on the job or who complain of unpaid wages



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or other labor violations. In documented cases from across the country, advocates allege that employers initially ignored SSA no-match letters and then decided to use them as a pretext to fire workers who participated in efforts to improve working conditions and wages.

■ What is the DHS safe harbor no-match rule?

On August 10, 2007, DHS finalized a proposed rule regarding an employer's legal obligations upon receiving a letter from SSA stating that the information submitted for an employee does not match SSA records (otherwise known as an SSA no-match letter). Under the new rule, U.S. Immigration and Customs Enforcement (ICE) could use the receipt by an employer of a no-match letter as evidence that the employer has "constructive knowledge" that the employee who is the subject of the letter is not authorized to be employed in the U.S. The rule included procedures that such an employer would have to take in order to avoid liability under immigration law.

The ACLU Immigrants' Rights Project, the AFL-CIO, Altschuler Berzon, LLP, the San Francisco and Alameda Central Labor Councils, and NILC filed a lawsuit on August 29, 2007, arguing that DHS does not have the legal authority to implement this rule and that the changes DHS sought to make to the immigration laws can be made only by Congress and not through this administrative procedure. On August 31, 2007, the U.S. district court in northern California issued a temporary restraining order that prevented SSA from sending out new no-match letters referring to the DHS rule, and blocked DHS from implementing the rule. SSA had planned to send the revised no-match letters to about 140,000 employers, which would have affected over 8 million workers.

On October 10, 2007, the district court granted the plaintiffs' request for a preliminary injunction. The judge found that the plaintiffs in the lawsuit had demonstrated that the DHS rule would have affected more than 8 million workers and would result in the termination of employment of lawfully authorized workers.

The court also found that if the DHS rule were allowed to proceed, the mailing of the no-match letters with a DHS insert regarding its new rule would "result in irreparable harm to innocent workers and employers." Since then the rule has continued to be enjoined, and on October 7, 2009, DHS rescinded the rule. The rule never went into effect and now has been eliminated.

Although DHS has rescinded the rule, SSA may still issue no-match letters to employers, and employers may still utilize them to retaliate against workers.

■ Why are no-match letters and the new rule bad public policy and bad for business?

- ☑ The rule is bad for the economy and will cause massive layoffs of employment-authorized workers and U.S. citizens.
- ☑ The new rule encourages the misconception that if a worker has been named in a no-match letter, this indicates that the worker is ineligible to work in the U.S.
- ☑ The new rule ignores the reality that the SSA database is not an immigration database and does not contain "real-time" data on individuals' immigration status or work authorization.
- ☑ Good employers who follow the new rule will feel the pain financially, as they may have to fire some of their best workers, in whom they have invested years of training. These same employers will bear the brunt of the unfair economic advantage that unscrupulous employers will have who will simply keep undocumented workers off the books.
- ☑ Bad-apple employers will continue to use no-match letters to selectively retaliate against workers, regardless of their immigration status, who try to exercise workplace rights such as filing legitimate complaints regarding unpaid wages, worker's compensation, sexual harassment, or discrimination.

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