



National Employment Law Project

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JUSTICE FOR LOW WAGE AND IMMIGRANT WORKER PROJECT

SOCIAL SECURITY ADMINISTRATION “NO-MATCH” LETTERS: TOP 10 TIPS FOR EMPLOYERS

On August 15, the Department of Homeland Security finalized a regulation that, if it takes effect, will significantly change its interpretation of the law with respect to an employer's response to a no-match letter. That rule has been enjoined by a federal court and is NOT in EFFECT. To read more about the rule, see Social Security No-Match Letters: Questions and Answers.

To correct errors in its database and in order to properly credit workers' earnings, the Social Security Administration (SSA) sends letters to certain employers with a list of employees whose names or Social Security numbers (SSN's) on their W-2 Form do not match SSA records. The SSA has a number of ways it attempts to update its database, and these letters, sometimes called “no-match” letters, are one mechanism SSA uses to inform workers that their earnings are not being properly credited.

The no-match letters are routinely sent out to employers who submit SSA wage reports that, when compared against information reported on the W-2s, show mismatched names or SSN's. They are sent to employers whose reports show mismatches on more than 10% of their IRS W-2 Forms, representing more than .5% of their workforce, sent to the SSA. Many employers with immigrant-dominated workforces receive these letters.

There are a number of reasons why an employer's records may not match the SSA's: the individual's name may have changed due to marriage or divorce; SSA or the employer may have made clerical errors in the spelling of the name or the number, or the employee may have provided an incomplete or incorrect name or number. A no-match letter from the SSA is *not* notice of any immigration or tax violation.

What should you do if you receive a no-match letter?



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Top Ten Tips For Employers Who Receive a No-Match Letter

1. **Don't panic.** The SSA is not an enforcement agency of either the Internal Revenue Service's (IRS) tax requirements or the Department of Homeland Security's immigration laws. The

SSA's goal in sending the letter is to update its database, which contains more than \$500 billion in earnings that cannot be credited to an individual account. The SSA does not track the results of its no-match letter campaigns, and there are no reported instances of the SSA "turning someone in" to either the IRS or ICE where there are discrepancies. In fact, the SSA has no enforcement authority, and simply sends this educational correspondence through the employer for the benefit of employees.

Moreover, the IRS has a guidance making it clear that simply receiving a no-match letter does not mean that the IRS will issue a fine against an employer. All an employer has to show to avoid being fined is that it asked the employee for a social security number when the employee started work. It is the solicitation by the employer that is important, not necessarily the response by the worker.

2. **Post a general notice to all employees** stating that in order to ensure that the Social Security taxes that are withdrawn from their wages are properly credited to their Social Security records they should compare the name and Social Security number that appears on their check stubs with that on their Social Security card, to ensure that the information is exactly the same. Include the same notice with all employee's check stubs at least once a year.

3. **Make a copy and give the letter** to all listed employees and to their union representative, if there is one. **Explain to them that the SSA is merely trying to properly credit each worker's earnings account.** Tell the employees you're not going to take any adverse action against them, but that you suggest that they check themselves to see whether or not the name on their Social Security card or the number listed by the SSA has an error.

4. **Instruct employees to deal directly with SSA to make any necessary corrections.** **Give the employees time**, including time off of work if necessary, to investigate or correct any errors they find either in their name or the SSN.



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5. **Check your reports to the SSA to make sure there were no errors on your end.** Sometimes employer wage reports have typographical mistakes. Checking the information provided to you on employee W-4 Forms is a quick way to check for those errors. Inform the SSA of any discrepancies you may have inadvertently caused.
6. **Suggest to your employees that they seek assistance** from a trusted community organization if they need it. Or, better yet, have advocates trained in no-match letters and immigrants' rights come provide a "know-your-rights" session for your employees to alleviate concerns.
7. **DO NOT fire, suspend, intimidate, or threaten any employee** whose name is on the no-match list with termination or any other adverse action. If you do, you may be in violation of federal and state laws prohibiting discrimination. The SSA letter itself states, "You should not use this letter to 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. Doing so could, in fact, violate state or federal law and subject you to legal consequences."
8. **DO NOT ask employees on the no-match list to bring in their Social Security card or other immigration-related documents.** Immigration law requires employers to check new hires to ensure that they have work authorization, and to fill out an INS Form I-9. Employees may show employers any document listed on the INS I-9 form to comply with this requirement. Once this is done, employers are not permitted to re-check an employee's immigration documents, as this can constitute unlawful discrimination and acts to intimidate workers.
9. **DO NOT assume that workers on the no-match list are undocumented or have provided false information.** There are many reasons why the employee's name or number might not match the SSA database records. The SSA itself states in its no-match letter that the reasons include typographical errors, incomplete or blank names or SSN's, or name changes.
10. **Promptly report any corrections to the SSA** that you or your employees find to ensure that the personal earnings records of your employees are accurately reported and credited. Some no-match letters give employers and employees 60 days to respond, but the SSA has no enforcement ability regarding this deadline.