

**GENERAL SAMPLE LETTER FROM WORKER'S ATTORNEY TO EMPLOYER
(AT-WILL EMPLOYMENT)**

[Employer Name]
[Employer Address]
[Date]

Re: Social Security No-Match Letter(s) for **[Client(s) Name]**

Dear **[Employer Name]**:

I am writing you because my client, **[Client Name]**, believes you received information from the Social Security Administration (SSA) stating that his name and Social Security number (SSN) do not match SSA's records. This is likely an "EDCOR" no-match letter;¹ SSA is sending these letters to thousands of employers across the country.

As you know, each year employers file a Wage and Tax Statement (Form W-2) with SSA and the Internal Revenue Service (IRS) to report how much they paid their employees and how much they deducted in taxes from their employees' wages throughout the year. SSA sends a no-match letter when the names or 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.

There are many reasons why a no-match may exist — a name change, input errors by SSA staff, and reporting errors by an employer or employee are all recognized causes of no-matches. In response to a no-match letter, SSA directs you to "review the name and SSN information you submitted on the Form W-2" and provide SSA with corrected information."² If you wish to speak to **[Client Name]** to confirm his name and/or SSN, contact me directly.

Importantly, you should not take *any* adverse action — up to and including termination — against **[Client Name]** based solely upon the receipt of one or more SSA no-match letters. Doing so may be illegal under federal or state law.

The SSA itself advises you against taking adverse action against **[Client Name]**, *including* "laying off, suspending, firing, or discriminating against that individual" just

¹ SSA Employer Correction Request,
<https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>.

² *Id.* In a sample letter that employers can give to employees in the event of a mismatch, the SSA states that the employee should "[c]heck to see if the information above matches the name and Social Security Number on your social security card. If it does not match, please provide me with the exact information as it is shown on your Social Security card" [sic]. The subsequent bulleted sentence in the letter says, "If the information above matches your card, please check with any local Social Security office to resolve the issue. Once resolved, please inform me of any changes."
<https://www.ssa.gov/employer/notices/SSNVSSsampleLetter.pdf>.

because his information does not match SSA records.³ In fact, doing so could subject you to enforcement by the U.S. Department of Justice and monetary penalties under other state and federal employment laws.⁴

Some employers who receive no-match letters mistakenly believe that the letter indicates that a worker is not authorized to work legally in the United States. Federal agency guidance, legal authority, and the no-match letter itself confirm that a no-match letter **does not** “make any statement about an employee’s immigration status.”⁵

You should not ask my client to prove his identity or work authorization solely as a result of receiving a no-match letter.⁶ You have **no legal obligation** to reverify my client’s

³ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>.

⁴ *Id.* Department of Justice FAQs state that taking adverse action against an employee “could subject the employer to liability under the anti discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324b.” <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>.

⁵ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>. “This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee’s work authorization or immigration status.”

There is also Department of Justice guidance and legal authority confirming that a no-match letter does not indicate a worker’s immigration status. See the Department of Justice Immigrant and Employee Rights Section (formerly Office of Special Counsel), *Frequently Asked Questions about Name/Social Security Number “No-Matches.”* “There are many possible reasons for a no-match letter, many of which have nothing to do with an individual’s immigration status or work authorization. Because of this, an employer should not assume that an employee referenced in a no-match letter is not work authorized, and should not take adverse action against the referenced employee based on that assumption.” <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>.

See also *Aramark Facility Services v. SEIU, Local 1877*. In that case, the Ninth Circuit stated that SSA no-match letters “do not indicate that the government suspects the workers of using fraudulent documents. Rather, they merely indicate that the worker’s earnings were not being properly credited, one explanation of which is fraudulent SSNs.” *Aramark Facility Services v. SEIU, Local 1877*, 530 F.3d 817, 828 (9th Cir. 2008).

⁶ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>; Department of Justice Office Immigrant and Employee Rights Section (formerly Office of Special Counsel), *Frequently Asked Questions About Name/Social Security Number “No-Matches,”* <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>. Upon receipt of no-match letters, an employer *could* choose to conduct a workplace-wide reverification of all workers’ immigration documents; however, the employer faces possible liability. Reverifications of workers’ immigration status must not violate the antidiscrimination protections of the Immigration and Nationality Act; the antidiscrimination provisions of applicable federal, state, and local law; the anti-retaliation provisions of the National Labor Relations Act, Fair Labor Standards Act, or any other relevant federal, state, and local law. Additionally, in a 1997 letter, the general counsel of the U.S. Immigration and Naturalization Service (the agency that formerly administered U.S. immigration law and regulations) stated that the agency would not consider an SSA no-match “by itself to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee’s work authorization.” Letter from David A. Martin,

immigration status based solely upon receipt of an SSA no-match letter.⁷ If you do require employees of certain national origin, racial, or ethnic groups to reverify their identity or employment eligibility based solely upon receipt of a no-match letter, **you may be liable** for having committed national origin discrimination in violation of the antidiscrimination provisions of federal immigration law.⁸

Again, if you wish to speak to [CLIENT NAME] about a no-match letter you received from SSA, please contact me.

Sincerely,

General Counsel, Immigration & Naturalization Service, to Bruce R. Larson, Esq. (Dec. 23, 1997) (AILA Doc. No. 98011391).

⁷ In a 1997 letter, the General Counsel of the U.S. Immigration and Naturalization Service (INS, the agency that formerly administered U.S. immigration law and regulations) stated that the agency would not consider an SSA no-match “by itself to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee’s work authorization.” Letter from David A. Martin, General Counsel, Immigration & Naturalization Service, to Bruce R. Larson, Esq. (Dec. 23, 1997) (AILA Doc. No. 98011391).

⁸ See 8 U.S.C. § 1324b.