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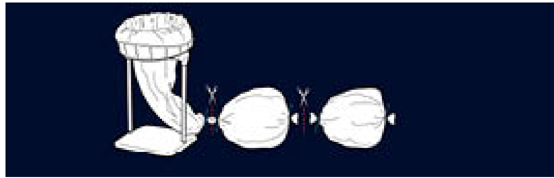

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How to Handle an SSA No-Match Letter

4 Min Read 5.22.2019 By Becki Young

Did you recently receive a "no-match" letter from the Social Security Administration (SSA) notifying you that an employee's name and social security number (SSN) do not match agency records? If so, you received one of 575,000 no-match letters issued in March and April, the first of such letters sent in over a decade.

The SSA first sent this type of controversial requests in 1993, but the program dwindled due to law suits from labor unions, immigration activists and the business community. It was eventually halted under the Obama administration in 2012. In July 2018, amidst a climate of greater immigration enforcement and President Trump's Buy American, Hire American Executive Order, the SSA announced its intention to resume sending "no-match" letters in 2019.

Now, no-match letters, or Employer Correction Requests, notifying employers of an SSN mismatch between the employer's and SSA's records have returned with a vengeance. These letters are still not evidence that an employee is unauthorized to work in the U.S. but they do create a duty for the employer to take corrective action within 60 days.

Further, Immigration and Customs Enforcement (ICE) regularly requests no-match letters in the context of an I-9 audit, and such letters have been used against employers in past immigration-related lawsuits to establish that employers had constructive knowledge they were employing unauthorized workers.

An employer who receives a no-match letter must walk a fine line – avoid discrimination while acting in good faith to resolve any questions regarding employment authorization.

> **"An employer who receives a no-match letter must walk a fine line – avoid discrimination while acting in good faith to resolve any questions regarding employment authorization."**

Our Firm frequently consults with employers who have received no-match letters or are subject to I-9 audits. Our most critical advice to any employer when it comes to I-9 compliance is to be proactive. Every employer

ought to have a written policy detailing how it will respond to no-match letters, and how it will organize and maintain records of all responses. Additionally, employers should consider implementing other best practices for I-9 compliance, including an annual internal audit of I-9 files, participation in E-Verify and use of the Social Security Number Verification Service (SSNVS).

Once you receive a no-match letter, here are some steps to resolve the issue:

- Register for Business Services Online (BSO), as instructed in the no-match letter, here. This will enable you to check whether the name and SSN of your employees match SSA records using the SSNVS. You can also view any related errors in your W-2 file. If you are already registered for BSO you do not need to re-register.
- Compare the no-match letter to your internal records, or W-4. The mistake may not be the employer's. If this is the source of the mismatch, correct the record with the IRS using form W-2c, and report the correction to SSA. You can file the revised W-2c electronically through your BSO account.
- If the information reported by SSA matches the information in your records, inform the employee of the discrepancy via written letter that includes a copy of the company's no-match policy. Copies of all correspondence should be kept in the employee's personnel file.
- Identify a deadline by which the employee must provide proof that the error has been rectified, or that they have taken action to rectify the problem. Previously, no-match letters did not specify a deadline and many employers defaulted to a 90 day guideline. The new no-match letters, however, require the employer to provide updated information within 60 days of receipt of the letter. Because SSA is a large bureaucracy, it can take more than 60 days for the agency to update its records. Employers should be prepared to present evidence to corroborate that timely action has been taken, and/or ask for an extension from SSA when needed. Because follow-up on a no-match letter requires employee action, be sure to present the employee with the letter as soon as possible upon receipt to ensure that they have ample time to rectify the issue.

If an employee advises you that they do not have authorization to work, you receive other credible information that the employee is unauthorized to work, or if after the deadline the employee is unable to provide proof that the discrepancy has been rectified or they are taking steps to address it with SSA, consult with a qualified immigration lawyer regarding next steps.

You may feel panicked and respond overzealously: but this can lead to perceived or actual discrimination. It is important to note that all no-match letters begin with a clear warning about discrimination and adverse action. Remember, a no-match letter does not necessarily mean that any employee lacks work authorization. Because the scope of the letter does not directly address an employee's work authorization or immigration status, terminating or penalizing an employee on the basis of a no-match letter could violate state or federal law and subject you to legal consequences. Also, after completing the I-9, an employee is not obligated to answer any other questions regarding their immigration status except in limited circumstances. Requesting proof of immigration status or employment eligibility simply in response to a no-match letter may also be a violation of the law.

There are legal implications in a no-match situation for both the employer and the employee. The employer may need advice about potential risks and liability. The employee may need advice about immigration status and options. Employers may consider an immigration consultation for all employees identified in the no-match letter or for any employees who self-identify as not having work authorization (though they should be advised not to discuss details of their immigration statuses in the workplace as it could lead to legal consequences for the employees and their coworkers).

Currently, SSA is authorized to share information with the Department of Homeland Security (DHS) for various reasons. As the administration continues its vigorous worksite enforcement and employer compliance efforts, we can expect increased information sharing between agencies. It would not be surprising if employers who received no-match letters become the targets of I-9 audits and immigration raids in the coming months. Hence, our most critical piece of advice – be proactive.

Becki Young

@grossmanyoung | Website

Becki Young is a partner with the law firm Grossman Young & Hammond. She is a seasoned business immigration attorney with 20 years of experience in the field representing hotels and restaurants.

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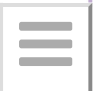

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