

No-Match Letters Rise Again: The Social Security Administration To Resume Sending "No-Match" Notices to Employers

The Social Security Administration (SSA) has announced that it has resumed the practice of sending "no-match letters" to employers whose reported employee social security numbers (SSNs) do not match SSA records. The SSA stopped sending no-match letters in 2008 due to threatened legal challenges to the proposed Department of Homeland Security regulations relating to them. The SSA now plans to resume sending the letters for tax year 2010. It will not reach back and send letters for tax years 2008 or 2009.

Background

The SSA is required to maintain earnings records for U.S. workers for federal income tax and benefits purposes. To assist with this process, employers are required to report employee wages annually to the SSA on W-2 tax forms (Wage and Tax Statement). For various reasons, the SSN and name submitted by an employer for a particular employee on these forms may not match SSA records.

In the past, the SSA attempted to resolve these discrepancies by sending letters informing employers that reported employee names or SSNs did not match SSA records. The stated reason for these "no-match letters" was for the SSA to obtain corrected information so that employee earnings could be properly posted for federal tax and benefits purposes. These letters listed multiple discrepancies in employee names or SSNs for each employer and instructed the employer to send corrected information to the SSA. They also advised employers against taking action against employees on the basis of the no-match letter alone.

The New No-Match Letter

The new no-match letters will list the SSN discrepancies for only one employee per letter. They also will specifically note that this information may be provided to the Internal Revenue Service or to the Department of Justice for investigation and prosecution. They will further advise that there may be legitimate reasons for the "no-match" issue, and will expressly state:

This letter does not imply that you or your employee intentionally provided incorrect information about the employee's name or SSN. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual.

Note, however, that if the employer has addressed the no-match letter with the employee and is still unable to resolve the discrepancy, then at that point a decision to take further action – such as a layoff or discharge – could possibly be warranted. Employers who receive these no-match letters should speak with legal counsel to determine the best course of action in these circumstances.

The SSA Advises Employers How To Proceed

The SSA provides the following advice for employers who receive one of the new no-match letters: [\[1\]](#)

- Remember that there are many possible reasons why the information you reported did not match our records. For example, the discrepancy could be due to a transcription or typographical error, an incomplete or blank name or SSN, or a name change.
- Check your own records first to determine if the information recorded by the SSA per the letter matches those records. For example, check your records for a copy of the employee's Social Security card, to determine that his/her name and SSN is being accurately reported.
- Remember that a "no match" between an employee's name and SSN in the employer and the SSA's records does not mean that the employee lacks work authorization, nor does it make any statement regarding a worker's immigration status.

If a search of your own records does not resolve the issue, and the employee is still employed with you:

- Ask the employee to provide his/her Social Security card and confirm that you (the employer) have accurately reported both the employee's name and SSN based on the information reflected on this card. The employee is required to show the card if it is available. You may photocopy the card for your records, but are not required to do so.
- If the no-match issue still remains unresolved, advise the employee to contact a local Social Security office.
- Give the employee a reasonable amount of time to rectify the situation with Social Security. For instance, it may take up to two weeks, and sometimes longer, to get a new or replacement Social Security card. (* Elsewhere on its website, the SSA states that it may take two months or longer to get a new Social Security card).
- If you (the employer) are able to resolve the discrepancy, complete the questionnaire and/or prepare a Form W-2c (Corrected Wage and Tax Statement) and send it with a covering Form W-3c transmittal with no supporting documents attached (follow the instructions on the no-match letter in this regard).
- If you cannot obtain correct information so that a Form W-2c can be prepared within a reasonable period of time, retain the documentation you have but do not to send copies of it to the SSA.

If the employee no longer works for you at the time you receive a no-match letter, the SSA advises that you should still try to obtain the corrected information from the employee through the last known address on his/her personnel records and submit it to the SSA on Form W-2c (Corrected Wage and Tax Statement) if possible.

If you are unable to resolve the no-match issue with the employee (e.g., the employee is unable to provide a valid SSN or no longer works for you and you cannot otherwise reconcile the SSA information conflict based on the information available to you),

- Document your efforts to obtain the corrected information in your records.
- Retain the documentation you have regarding the employee as required by law. (This is in the event the IRS contacts you.)
- Employers are encouraged to use the Social Security Number Verification Service (SSNVS), located [here](#) to minimize future name and SSN mismatches.
- Employers are further encouraged to use Form W-2c [Online](#) to correct name and SSN errors.
- If you need additional information relating to the SSN listed on the no-match letter,

you may also call the SSAs toll-free number, 1-800-772-6270, between 7:00 A.M. and 7:00 P.M., Eastern Standard Time (EST), Monday through Friday.

Note that the issue of what is a “reasonable amount of time” for the employee to resolve the SSN information discrepancy remains unclear, as does the question of how the employer is to respond to the SSA (if at all) when the discrepancy cannot be resolved. Nor is the SSA particularly clear on its preferred method for correcting the conflicting information described in a no-match letter.

With Immigration and Customs Enforcement’s (ICE) aggressive stance on work authorization enforcement, employers cannot afford to ignore these SSA no-match letters, which will be specifically requested by the ICE in the event of an enforcement action. An employer’s response to these letters may therefore be critical to its position in such actions. In the short run at least, we are advising all employers to seek legal counsel if you receive a no-match letter and are unable to resolve the information discrepancy described in the letter after an initial investigation.

For assistance in investigating and/or responding to the new SSA no-match letters, please contact [Kelly Weston](mailto:Kw Weston) at kweston@millermartin.com or your Miller & Martin Labor and Employment law attorney.

[1] The following instructions are taken from the Social Security Administration publication found at <https://secure.ssa.gov/apps10/public/reference.nsf/links/04052011011437PM>.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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