Employers: What You Need to Know About Social Security Administration No-Match Letters

What is an "SSA no-match" letter?

A Social Security Administration (SSA) no-match letter, officially called an "Employer Correction Request" notice, is an educational letter intended to alert an employer about a discrepancy between the information the employer filed and the SSA's records that may affect the accuracy of an employee's earnings record for purposes of Social Security benefits. The letter advises that the reported employee name and/or Social Security number (SSN) does not match the name and/or SSN in the SSA's records. The SSA resumed issuing these letters to employers in March 2019, after several years of not doing so.

Does receipt of an SSA no-match letter serve as notice of wrongdoing by an employer or employee?

No. A discrepancy may exist for many reasons, including typos, clerical errors, or unreported name changes. The SSA letter states: *"This letter does not imply that you [the employer] or your employee intentionally gave the government wrong information about the employee's name or SSN."* [1]

Does receipt of an SSA no-match letter demonstrate that an employee is undocumented or otherwise without work authorization?

No. As noted above, discrepancies prompting the SSA to issue a no-match letter may arise for a number of reasons. The SSA letter states: "*This letter does not address your employee's work authorization or immigration status."* The U.S. Department of Justice has also advised that employers should not assume that any named employees have an issue with their immigration status because of the receipt of a letter.[2]

What should employers who receive a no-match letter do?

The no-match letter provides instructions on how to view and correct name and SSN mismatches. Employers should provide employees a copy of the letter so employees can help ensure the SSA has accurate information. The SSA provides further information on its website, which contains sample notices, step-by-step instructions, and FAQs: https://www.ssa.gov/employer/notices.html.

As stated in the SSA letter: *"Do not take adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because this letter identifies a mismatch between his or her SSN or name as reported to us."*

Is there a deadline for providing corrections?

No. There is no deadline. The SSA describes no-match letters as "educational letters intended to alert employers of a no-match."

Furthermore, the SSA has stated that it is not a law enforcement agency and, in early June, confirmed with Congressional officials that it "does not take any action, nor are there any SSA-related consequences, for employers' non-compliance with [no-match] letters."[3]

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Does the SSA share any information about employers and employees whose records do not match with other agencies?

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[1] Sample Social Security Administration Retirement, Survivors, and Disability Insurance Employer Correction Request, available at https://www.ssa.gov/employer/notices/EDCOR%20Letter%20-%20Final%209-16-19508.docx.pdf

[2] Department of Justice, Frequently Asked Questions about Name/Social Security Number "No Matches," https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf

[3] Social Security Administration Acting Commissioner Nancy A. Berryhill, Letter on Educational Correspondence (EDCOR)/Employer Correction Request (i.e. "no-match") letters addressed to Hon. Jim Acosta (June 3, 2019).

[4] Social Security Administration, Questions Employers Ask for the Employer Correction Request Notice, available at https://www.ssa.gov/employer/notices/Questions%20Employers%20Ask%20Final.pdf.

According to the SSA, no-match letter data is protected federal tax information and, therefore, SSA is "prohibited from sharing this information with other agencies unless for a specific purpose authorized under [Internal Revenue Code section] 6103."[4] The SSA does share no-match information with the Internal Revenue Service (IRS) because the SSA is considered an agent of the IRS.

How can employers and employees learn more?

Employers may wish to consult with legal counsel or industry associations. Employees may wish to consult their workplace representatives and/or seek legal assistance in addressing corrections, where appropriate. New Yorkers in need of immigration legal help may call 311 and say "ActionNYC" or "immigration legal services" for referrals.

SSA No-Match Letters and Avoiding Discrimination under the New York City Human Rights Law

Taking an adverse action against an employee due to a discrepancy, such as putting an employee on leave or terminating employment, could violate the NYC Human Rights Law (NYCHRL). Among other protections, the NYCHRL prohibits employers from discriminating against an employee, even in part, because of the employee's actual or perceived immigration status, national origin, or membership in any other protected class. An employer who uses the receipt of a no-match letter to discriminate or retaliate against an employee could be subject to civil penalties up to $250,000 and be required to pay compensatory damages to the impacted employee. State and federal law also prohibit discrimination and also carry penalties.

The following are examples of NYCHRL violations involving no-match letters:

- An employer receives a no-match letter that lists an employee who emigrated from the Philippines. The employer has long looked for a reason to discharge the employee because of their accent, even though it has no impact on their ability to do their job, and the employee is legally able to work. With receipt of the no-match letter, the employer discharges the employee.
- An employer receives a no-match letter indicating no-match issues. The employer assumes that the listing of a British immigrant worker was due to a mistake in the information provided by the employee. The employer gives the employee a copy of the letter and takes no further action. However, the employer suspects that several other workers listed in the no-match letter, who are immigrants from Mexico, do not have legal immigration status. The employer requires them to fill out new I-9 forms and bring in original proof of work authorization. Some workers do not bring in this information; the employer subsequently terminates their employment. Because the employer only required employees of Mexican origin to provide documentation, this employer will be liable for discrimination based on national origin and immigration status under the NYCHRL.
- An employee has been outspoken at work about unfair terms and conditions for Black employees. The employer later receives a no-match letter indicating a no-match issue for that employee. The employer decides to fire the employee in response to the employee's complaints of discrimination and uses the no-match letter as a pretext for the firing. This employer will be liable for retaliation under the NYCHRL because he has taken an adverse action against an employee due to the employee's engagement in protected activity.

Additional resources for employers:
Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin:
https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf
How to Avoid Discrimination in the I-9 and Employment Verification Process:
https://www.justice.gov/crt/page/file/1132606/download
Information for Employers on Citizenship Status Discrimination:
https://www.justice.gov/crt/page/file/1080256/download
U.S. Department of Justice's SSA No-Match Guidance:
https://www.justice.gov/crt/ssa-no-match-guidance-page