How to Respond to a No-match Letter from the Social Security Administration

Recently, the Social Security Administration (SSA) restarted its practice of mailing no-match letters to employers throughout the U.S. The new no-match letters advise the employer receiving the letter that a Social Security number for a particular employee does not match the name assigned to that number according to the records maintained by SSA. A mismatch typically is discovered during review of employers’ annual wage reports. The no-match letter presents a payroll tax issue and not an immigration issue, but it can become an immigration issue if recipients of these letters do not take action once the letter is received. Indeed, SSA stopped the practice of issuing no-match letters as a result of litigation concerning a proposed Department of Homeland Security regulation. The proposed regulation provided steps for employers to follow in response to a no-match letter to avoid a violation of U.S. immigration laws. Employers who followed the steps in the proposed regulation fell within a “safe harbor,” avoiding a finding that they had actual or constructive knowledge they were employing unauthorized workers. After delays in its implementation and while the litigation was pending, the regulation was withdrawn.

Employers who receive no-match letters are reminded to act promptly. Employers should be prepared to show they acted in good faith in their decision to continue to employ or terminate employees in response to no-match letters. Recipients of a no-match letter should not take any adverse employment action against any employee based on receipt of the no-match letter alone. Moreover, employers should refrain from demanding employees that are subjects of letters to produce their Social Security cards (though an employer may view the card if an employee

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voluntarily produces it). Instead, employers should verify the information provided on the Wage and Tax Statement matches the information contained in the employee’s personnel file. If incorrect information was placed on the Wage and Tax Statement, employers are advised to correct the error with SSA.

If there was no transcription error the employer should provide written notice to each individual who is the subject of the no-match letter that there is a discrepancy between the Social Security number provided to the employer and SSA’s database. The SSA website includes a sample letter to provide employees for this purpose. The notice from the employer should ask the employee to resolve the issue.

Employers are advised to allow the employees a reasonable amount of time to resolve the issue with SSA. Employers may require the individual to provide proof that the issue is resolved or that the employee is in the process of resolving the issue. Employers are not required to take any action if employees do not provide corrected information. Despite not having a requirement to take any action if employees do not provide corrected information, employers are advised to follow up with their employees after a reasonable amount of time has passed to ensure steps are being taken to resolve the issue. Employers should document each time they ask the employee whether the issue has been resolved. What constitutes a reasonable time will depend on the employee’s reason for not having yet resolved the issue. If the employee appears to be engaged in an active effort to resolve the issue, it may not be necessary to require any further action from the employee.

If no action is being taken by the employee to resolve the issue, it may be proper to reverify the employee’s work authorization by completing a new I-9 form. Reverifying an employee’s work authorization by completing a new I-9 form is not necessary if the employee completed the I-9 form without use of the Social Security card (for example, if the employee produced a List A document
for I-9 purposes at the time of hire). If this is the action the employer chooses to take, the employer cannot permit the subject employee to rely on the questionable Social Security card (a List C document) to prove employment eligibility. In this instance, the employee must either produce another List C document or a document from List A. If the employee insists the given Social Security number is correct, the employer may respond to SSA in writing advising the employer has looked into the matter and the employee states the given Social Security number is correct. The employer’s response to SSA should request that SSA verify its records to determine whether a computer error or other mistake occurred. If SSA responds by indicating the Social Security number is invalid, termination may be appropriate. Legal counsel should be consulted before the termination decision is made. Of course, if the employer has actual knowledge the employee is unauthorized to work, the employee must be terminated.

Employers with employees who are either unable to resolve the mismatch issue because the employee is unable to provide a Social Security card or may no longer work for the employer should document efforts made to obtain the corrected information and retain the documentation for four years. Legal counsel also should be consulted.

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