

Your Company Needs to Know About "No Match" Letters

Since 1994, the Social Security Administration ("SSA") has been sending "no match" letters to employers when an employee's name or Social Security Number does not match SSA records. The purpose of these letters is to ensure that employees receive proper credit for earnings. Mismatched records are a growing problem for the SSA. The agency currently has more than 255 million mismatched records, and this number increases at a rate of 8 to 11 million per year.

There are many possible reasons for mismatches. Some are failures to report changes in information, such as name changes after marriage. Some are recording or typographical errors. Others result from employees who intentionally provide false information to their employers.

One reason an employee may provide false information to an employer is the employee is an illegal immigrant. For this reason, the Department of Homeland Security ("DHS") has seized upon the SSA's record of mismatches as a way to ensure compliance with immigration laws.

DHS is currently trying to implement changes to existing federal regulations that would require an employer to verify immigrant status upon receipt of a "no match" letter. Under the regulations, the employer must first verify that the mismatch is not attributable to a mistake in the employer's records. The employer must then advise the employee to resolve the issue with the SSA. If the issue is not resolved within 90 days after receipt of the "no match" letter, the employer must complete a new Form I-9 for the employee, and cannot accept any documentation that includes disputed information. An employer that does not follow these guidelines and retains an employee who is not authorized to work could face civil and criminal penalties.

These changes have been met with stiff opposition from groups representing employers and employees. Businesses argue that the regulations impose significant burdens on smaller companies, and compel companies to act as immigration police. Employee groups fear that many authorized workers will lose their jobs because of the difficulty in clearing up discrepancies, and that the regulations will lead to illegal discrimination.

DHS's efforts were recently dealt a serious blow. The AFL-CIO and other labor groups filed a lawsuit, in which business groups later joined, challenging these regulations. The federal judge in that case recently granted a preliminary injunction temporarily prohibiting DHS from enforcing the regulations.

DHS is expected to appeal. Companies must be prepared to comply with the new regulations if the injunction is overturned. For now, however, employers should not take action against an employee solely based on receipt of a "no match" letter. Any such action may be construed as illegal discrimination. If your company receives a "no match" letter and has questions about its obligations, please contact us.



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