Facts About the Social Security "No-Match" Letter

January 3, 2008

■ What is an SSA no-match letter?

Each year, employers file a Wage and Tax Statement (Form W-2) with the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to report how much they paid their employees and how much they deducted in taxes from employees' wages throughout the year. SSA sends a "no-match" letter when the names or Social Security numbers (SSNs) listed on an employer's W-2 forms do not match SSA's records. The letter's purpose is to notify workers and employers of the discrepancy and to alert workers that they are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

■ Who receives a no-match letter?

SSA sends three types of "no-match" letter: (1) a letter sent directly to workers at their home; (2) one sent to an employer about an individual worker when SSA does not have the worker's correct home address; and (3) one sent to an employer about multiple employees when at least ten employees during the year, or one-half of one percent of the employer's workforce, are the subject of a no-match. Each type of SSA no-match letter states that the letter does not imply that the worker or the employer intentionally provided incorrect information about the worker's name or SSN.

■ Why would a worker receive a no-match letter?

According to SSA, there may be several reasons why information submitted for a worker does not match SSA records, including:

- ☑ A typographical or clerical error was made on a W-4 or W-2 form (such as misspelling a name or transposing a number in the SSN);
- ☑ The worker's name has changed due to marriage or divorce;
- ☑ Information provided on the W-4 or W-2 form is incomplete; or
- ☑ The worker's middle name was transposed (for example, "David Juan Jimenez" instead of "Juan David Jimenez").

■ Does being named in a no-match letter indicate that a worker is undocumented?

No. The no-match letter itself states that it does not "make any statement about an employee's immigration status." In fact, of the estimated 17.8 million errors in SSA's database, 12.7 million (or over 70 percent) pertain to native-born U.S. citizens.

■ Do no-match letters affect workers' labor rights?

The no-match letter clearly states that employers should not "take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her Social Security number appears on the list" and that "[d]oing so could, in fact, violate State or Federal law and subject you to legal consequences" (emphasis added). However, unscrupulous employers do misuse the letter to interfere with organizing campaigns and to retaliate against workers who have been injured on the job or who complain of unpaid wages or

NATIONAL IMMIGRATION LAW CENTER
www.nilc.org

LOS ANGELES (Headquarters)
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

OAKLAND, CA
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028 fax

other labor violations. In documented cases from across the country, advocates allege that employers initially ignored SSA no-match letters and then decided to use them as a pretext to fire workers who participated in efforts to improve working conditions and wages.

■ What is the new Department of Homeland Security (DHS) no-match rule?

On August 10, 2007, DHS announced that it had finalized its rule regarding an employer's legal obligations upon receiving a letter from SSA stating that the information submitted for an employee does not match SSA records (otherwise known as an SSA "no-match" letter). Under the new rule, U.S. Immigration and Customs Enforcement (ICE) can use the receipt by an employer of a no-match letter as evidence that the employer has "constructive knowledge" that the employee who is the subject of the letter is not authorized to work. The rule includes "safe harbor" procedures that such an employer should follow in order to avoid liability under the Immigration and Nationality Act.

The AFL-CIO, the San Francisco and Alameda Central Labor Councils, the ACLU Immigrants' Rights Project, Altschuler Berzon, LLP, and NILC filed a lawsuit on Aug. 29, 2007, arguing that DHS does not have the legal authority to implement this rule and that the changes DHS seeks to make to the immigration laws can be made only by Congress and not through this administrative procedure. On August 31st, the U.S. District Court in Northern California issued a Temporary Restraining Order which prevented SSA from sending the new letters referring to the DHS rule on September 4th and blocked DHS from implementing the rule which was scheduled to go into effect on September 14. SSA had planned on sending the revised no-match letters to about 140,000 employers which would have impacted over 8 million workers.

■ How does the lawsuit impact the DHS rule?

On October 10, 2007, the U.S. District Court in Northern California, where the lawsuit was filed, granted the plaintiffs' request for a preliminary injunction. The judge found that the plaintiffs in the lawsuit demonstrated that the DHS rule would have affected more than eight million workers and would result in the termination of employment of lawfully authorized workers. The Court also found that if the DHS rule were allowed to proceed, the mailing of the no-match letters with the DHS insert would "result in irreparable harm to innocent workers and employers." On November 23, 2007, DHS filed a motion requesting that the Court issue a stay in the litigation, and on December 14, 2007, the Court granted the DHS motion to stay. This means that DHS is blocked from implementing the rule and it is not in effect. DHS plans to publish a new proposed rule shortly with the hope of finalizing it in March 2008 when SSA would begin sending out the new no-match letters for the year.

■ Why are no-match letters and the new rule bad public policy and bad for business?

- ☑ The new rule encourages the misconception that if a worker has been named in a "no-match" letter, this indicates that the worker is ineligible to work in the U.S.
- ☑ The new rule ignores the reality that the SSA database is not an immigration database and does not contain "real-time" data on individuals' immigration status or work authorization.
- ☑ An already overburdened SSA (at its lowest staffing levels since the 1970s) will be overwhelmed if the rule goes into effect, and the current backlog of all claims for retirement, disability, and Supplemental Security Income benefits will increase astronomically. Even the American Federation of Government Employees, Council 220, the union that represents SSA workers, has said that the impact on SSA will be devastating.
- ☑ Good employers who follow the new rule will feel the pain financially, as they may have to fire some of their best workers, in whom they have invested years of training. These same employers will bear the brunt of the unfair economic advantage that unscrupulous employers will have who will simply keep undocumented workers off the books.

- ☑ Bad-apple employers will continue to use no-match letters to selectively retaliate against workers, regardless of their immigration status, who try to exercise workplace rights such as filing legitimate complaints regarding unpaid wages, worker’s compensation, sexual harassment or discrimination.

FOR MORE INFORMATION, CONTACT

Monica Guizar, employment policy attorney | guizar@nilc.org | 213.639.3900 x. 123
Tyler Moran, employment policy director | moran@nilc.org | 208.333.1424