

SSA No-Match Letters: A Seven-Step Guide On How Employers Should Respond Step

1: What does the letter state?

Generally, the letter will notify employers that the Administration received one or more W-2's from your company in which an employee's name and or social security number did not match in the Administration's database. The Administration highlights the importance of matching information so that employees receive the benefits they deserve.

The letter also highlights the following possible reasons for a no-match

- Typographical errors (i.e. spelling errors to the name, transposed numbers)
- Name changes that have not been reported to the Administration (i.e. marriage, divorce)
- Inaccurate input of the SSN on the W-2
- Identity theft
- Domestic violence
- Witness Protection status
- Missing initial or hyphen

Once employers are in receipt of a no-match letter, employers must log onto a website called the Business Services Online (BSO) to retrieve the names of the employees that have been identified as a no-match. The administration also requires employers to report the "necessary corrections to the Form W-2C within 60 days of receipt of this letter," which allows the administration to maintain accurate earnings records for employees and ensure employees get the benefits they are due.

Clarification of what the letter does NOT say

Employers should not assume that a No-Match letter means an employee intentionally submitted the wrong name or SSN. Additionally, it does not call into question any employees' immigration status or work authorization. Lastly the letter warns employers that they are not to take any adverse employment action against any employee because of the letter "such as laying off, suspending, firing, or discriminating against any individual, just because his or her SSN or name does not match our records." This action could be a violation of "State or Federal Law and [could] subject you to legal consequences."

Step 2: How does this impact the business?

The letter will provide the following

- The number of alleged mismatches
- The tax year of concern

The amount of no-matches will dictate if an internal review is required and may potentially impact a large part of the business. Once employees are aware of the internal review, you may have some employees quit even if they are not identified in the letter.

Step 3: Review Employee records

Employers should review records thoroughly. Employers should examine the names provided on the no match letter with the SSN's provided on the W-4 forms for the tax years in question. Employers should identify typos, name changes, transposed numbers, missing middle initials and other mistakes. This will help identify true clerical errors or if the issue is more problematic.

Step 4: What employment policies or CBA provisions may apply?

No Matches may be a result of clerical errors, but some may not. This does not mean mentioned employees are not authorized to work legally in the United States. However, employers should be aware that the employee willfully or not may have provided the employer with false information. Employers should review which policies that may apply to this situation and how they have been enforced in the past to remain consistent. Inconsistent practices can lead to claims of discrimination.

Additionally, employers should be aware, employees covered under a collective bargaining agreement or represented by a labor union, where discipline or termination is necessary may require union involvement. Courts have held that just receiving a no match letter does not provide employers with "just cause" to terminate employment even when the employee is given opportunity to resolve the mismatch and fails to do so. The employee can also invoke Weingarten rights when asked to meet with HR.

Step 5: Employers must take caution

Now that employers have evaluated possible exposure, employers should consider their next steps. It is not recommended that employers ignore such a notice, instead it is recommended that employers log onto the BSO website. Ignoring this notice and failing to act could be viewed by Immigration and Customs Enforcement (ICE), as proof that the employer had constructive knowledge of potential immigration issues.

What should employers do before notifying employees of receiving a No-Match letter?

Check payroll records for possible errors. It is important to rule out administrative errors before taking any action.

- Again, Re-Assess the impact to the business
- This is not an opportunity to demand new form I-9s, as this runs the risk of claims of discrimination and lawsuits.

How employers should notify the employees of a No-Match letter.

It is recommended that two members of management/HR meet with the affected employee privately. You should explain to the employee that the company has been notified that the SSN on file does not match with the employee's name. You should further instruct the employee to remedy the issue with the local Social Security Administration office and provide the result within 30 days. It is recommended that you confirm your request in writing when you meet with the employee. (keep a signed copy retained in your records) You should include the maximum timeframe in which you want to hear back from the employee to resolve the issue. Due to each individual circumstance, employers may need to be flexible when employees need more than 30 days.

Be prepared to document and take action if necessary. Employers should document the employee's response to the notification. For example, if the employee admits, that they are in fact undocumented or otherwise not legal to work in the United States, their employment should be terminated immediately. There are penalties associated with knowingly employing individuals that are not lawfully permitted to work in the US. Be prepared to track and document when notice is given to employees as well as the efforts to resolve the issue

What if the issue is not resolved timely?

If the employee is delaying the process you should consider sending reminder notices (to include the original notice) to the employee's home. Even after that time if not resolved timely, employers should meet with legal counsel to discuss next steps. You should divulge all information you have received about the employee to legal counsel to determine the most appropriate employment action.

Step 6: Employers Response to SSA

Employers should take note and follow the instructions from the Administration. Specifically, employers will need to file Form W-2C that informs the Administration of corrections to employees' name and Social Security numbers.

Additionally, it's recommended that employers further inform the Administration in a letter of the status of the identified individuals. Some examples may be:

- Employee is not currently employed by the company
- Employee asserts that the SSN is correct
- Employee has informed the company they are working with SSA to address the issue

Step 7: Evaluate I-9 Compliance

Once employers have tackled the SSN no-matches, employers may consider reviewing I-9 compliance. While the SSN No-Match letters are for the purposes of tracking benefits, it's certainly not to question immigration status of employees. With that said, if employers are interested in reviewing I-9 policies and procedures they should do so under the advice of legal counsel.

Employer Take Away

Employers must not ignore their obligation to comply with the Administrations inquiries and must make good faith effort to address the identified issue. This is also a good opportunity for employers to take proactive measures at time of hire such as:

- Ensuring name and SSN numbers match
- Consider utilizing E-Verify
- Consider utilizing Social Security Number Verification Service for payroll reporting purposes.