

# New SSA “No-Match” Letter Rule Expands Potential Employer Liability

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In a new rule which will take effect on September 14, 2007, the Department of Homeland Security has both expanded the circumstances under which an employer will have “constructive knowledge” that one of its workers is illegally employed and thereby be subject to liability for continuing to employ the person, and issued new guidance advising employers how to qualify for “safe harbor” in the event of a civil or criminal investigation.

By way of background, the Social Security Administration (SSA) often sends letters (known as “no-match” letters) to employers in situations where there is a mismatch between an employee’s identity and a document that the employee presented as verification of employment eligibility (e.g., a Social Security card). There are numerous innocuous reasons why such a mismatch might exist, but one cause may be that an individual has used either a false number or a number belonging to someone else as a way to fraudulently claim the ability to work legally.

Under the new rule, in response to receipt of a no-match letter, an employer will be required to take “reasonable steps” to resolve a SSA discrepancy, or else face potential liability for having “constructive knowledge” of the existence of an unauthorized employee. U.S. Immigration and Customs Enforcement (ICE) suggests that “reasonable steps” would include the following:

- (1) Within 30 days, the employer should check its records to ensure that the mismatch was not the result of an error on the part of the employer.
- (2) If it is not the employer’s error, the employee should be asked to confirm the accuracy of the employer’s records.
- (3) If the employer’s records are indeed accurate, the employer should then ask the employee to resolve the mismatch directly with SSA.
- (4) If the employee is able to successfully resolve the mismatch, the employer should ensure that all of the instructions in the no-match letter are followed, and should verify with SSA that the error has been corrected; retain a record of the date and time of verification; and document the steps taken to complete the correction and verification processes.
- (5) If the matter is not resolved within 90 days of the employer’s receipt of the no-match letter, within three additional days, the employer should complete a new Form I-9 as if the employee in question were newly

hired. Should this step become necessary, the employer may not accept any document presented to verify the employee's authorization for work that uses the questionable Social Security number. If by following these procedures the employer cannot confirm that the employee is authorized to work, the employer must terminate the employee's employment or else risk liability for violating the law by "knowingly" continuing to hire an unauthorized worker.

*Sources: ICE; American Immigration Lawyers Association*