

# Social Security Administration No-Match Letters

---

The United Food and Commercial Workers International Union represents 1.3 million workers in North America, primarily in the grocery, retail, and meatpacking industries. This paper addresses our concerns with the Department of Homeland Security's (DHS) use of Social Security Administration (SSA) no-match letters to conduct immigration enforcement; this practice unintentionally, but unavoidably, results in employer misuse of the no-match letters to workers' detriment.

The incoming administration should take immediate steps to either 1) stop the issuance of Social Security no-match letters all together, or alternatively, 2) apply the policy set out in Aramark Facility Services v. Service Employees International Union; revoke the DHS Safe Harbor rule; and issue clear messages to DHS and the business community that SSA no-match letters are sent solely to inform employees of a possible error with their Social Security information, and encourage, but not require them to contact SSA to address the issue. Employers should never be a party to a matter that is between an individual worker and the SSA.

## **End Issuance of SSA No-Match Letters**

The Social Security Administration maintains an Earnings Suspense File (ESF) which contains all information that comes in from employers on the W-2 tax form which results in a mismatch between the name of the employee and the social security number reported on the form. These errors result in the workers not being credited with the Social Security benefits they have earned from their wages. There are several reasons why a name may not match its social security number, including clerical errors; change of name; and employee use of compound, paternal, or maternal last names.

To attempt to resolve the mismatches saved up in the ESF, SSA implemented several programs involving a number of actions, one of which was sending no-match letters out to employers as part of the Educational Correspondence program. The most effective program, Single Select Process, results in 61 percent of mismatch corrections. No-match letters sent to employers however, account for less than 2 percent of all corrections made to the ESF. Considering the significant adverse impact and confusion the no-match program sets upon employers, workers, and immigration enforcement, SSA should stop sending out SSA no-match letters to employers altogether, and resume sending the no-match letters out to the individual employees only.

## **Confirm That Employers and Employees Are Not Obligated to Respond to SSA No-Match Letters as a Matter of Immigration Policy**

When SSA first began to send no-match letters to employers, the letters always included a paragraph stating that the letter in no way implies anything about an employee's immigration status. The Ninth Circuit recently affirmed this rule in Aramark Facility Services v. Service Employees



International Union, where the Court affirmed the Arbitrator's award to provide reinstatement and backpay for all employees terminated because of the employer's receipt of a no-match letter and stated that "no-match letters' themselves could not have put [the employer] on constructive notice that any particular employee mentioned was undocumented." Aramark, 530 F.3d 817, 825-826 (9th Cir. 2008).

Though the policy and purpose of SSA no-match letters is clear on its face, employers have misused the letter since the beginning of the program. In an attempt to avoid any potential problems down the line, employers have been known to terminate all employees listed on the no-match letter instantly. Without a union contract, those employees are left without a remedy or recourse, often oblivious to the reason for their discharge. SSA no-match letters have also provided unscrupulous employers with an additional tool by which to attack unions; discriminate against workers on the basis of race, national origin, or union activity; and retaliate against workers who challenge their employer's practices or assert their workplace rights.

The DHS now wants to expand the reach of SSA no-match letters to immigration enforcement. DHS issued proposed regulations in July 2006 stating that employees listed on no-match letters may not be authorized to work, and that employers must take affirmative steps outlined in the rule as "Safe Harbor" procedures, to determine whether the employees listed were, in fact, authorized. Failure to follow the procedures may result in a finding by DHS that the employer had constructive knowledge of employing undocumented workers.

Although the "Safe Harbor" rule has not yet been implemented, the unintended results of the rule are already clear. For example, in April 2007, a U.S. citizen employee at a pork processing plant in North Carolina was told by her employer that because her name appeared on a SSA no-match letter, she had to return with specific documentation about her identity from SSA. Though she visited SSA more than five times, the documents she produced never satisfied her employer and she was ultimately terminated. At a represented plant in Mississippi in October 2007, an employer sent notices to approximately 129 employees purportedly based on SSA no-match letters, stating that those employees had 90 days to resolve any social security issues. Further investigation revealed that the employer's actions were improperly based on no-match letters from before 2007 and that the notices were targeted toward senior employees who were paid higher wages in the plant.

The new administration should send a firm message to the DHS and employers that SSA no-match letters do not impose constructive knowledge upon employers that any of the employees are undocumented, and that the DHS Safe Harbor rule should be revoked, and that employers and employees have absolutely no duty to take any action in response to no-match letters, and that they are merely provided as a service to inform employees of a potential error in their SSA records.