SSA No-Match Letters, I-9 Audits, Reverification and Practical Tips for Unions

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SSA No-Match Letters

Helpful Tips for Unions
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SSA No-Match Letters: An Introduction

- In July of 2018, SSA announced that it would resume sending no-match letters.
- Beginning in March of 2019, the SSA resumed mailing notices to employers identified as having *at least one* name and social security number (SSN) combination submitted on its W-2 form that does not match the SSA’s records.
- [https://www.ssa.gov/employer/notices.html](https://www.ssa.gov/employer/notices.html)
- The SSA calls these letters “Employer Correction Request Notices (EDCOR)” but they are commonly referred to as SSA “no-match” letters.
What is a SSA No-Match Letter?

SSA can send a no-match letter when names or Social Security numbers (SSNs) listed on an employer’s Form W-2 do not match SSA’s records.

2019 SSA will send no-match letter to every employer with at least ONE “no-match”
What is Purpose of SSA No-Match Letter?

To ensure that workers’ earning are properly credited, which can affect workers’ retirement, survivor, disability, or other benefits administered by SSA in the future.

To assist workers with accurate wage reporting.

What You Should Do

To view the names and SSN that could not be matched to our records, please use the Employer Report Status within Business Services Online (BSO). To begin using BSO, you must complete a one-time registration process. To register, go to www.socialsecurity.gov/bso/bswelcome.htm. You may also file your Form W-2C corrections using W-2C online.

Additionally, we provide a free Social Security Number Verification Service (SSNVS) through BSO that allows you to verify employees’ names and SSNs in our records in advance of filing your annual Forms W-2 submissions. Using SSNVS can significantly reduce errors through BSO.

Please review the name and SSN information you submitted on the Form W-2 and provide us necessary corrections on the Form W-2-C within 60 days of receipt of this letter so we can maintain an accurate earnings record for each employee and make sure your employees get the benefits they are due.

If You Have Any Questions

If you have any questions, please call us toll-free at 1-800-772-6270 (TTY 1-800-325-0778) between 7 a.m. and 7 p.m., Eastern time, Monday through Friday. We can answer most questions over the phone. If you call, please have this letter with you. It will help us answer your questions. Also, general program information is available from our website at www.socialsecurity.gov/employer.

Social Security Administration

Visit our website at www.socialsecurity.gov
Purpose of No-Match Letter

- When a no-match occurs between an employer’s records and SSA’s records, SSA separates out the taxes that an employer has paid and puts them in a different account.

- These taxes no longer count towards the future retirement benefits that an employee would receive, so SSA tries to fix the no-matches to ensure that everyone gets the full benefit amounts they should be entitled to. That is the purpose of the no-match letter.
What causes a no-match?

- There are many reasons why reported names and SSNs may not match with SSA’s records, including:
  - 1) typographical errors,
  - 2) unreported name changes, and
  - 3) inaccurate or incomplete employer records.
Reasons for a no-match

- Worker’s name has changed (due to marriage, divorce, or other reason)
- Typographical or clerical error was made on a Form W-2 or Form W-4, such as misspelling a name or transposing a number in the SSN
- Worker’s middle name was transposed (for example, “Monica Teresa Guizar” instead of “Teresa Monica Guizar”)
- Information provided on either the Form W-2 or W-4 is incomplete or incorrect
Employer Obligations

- The letter instructs employers to update name and SSN information within 60 days.

- The letter is silent as to any consequences an employer faces for failure to update the information.
Warning to Employers!

**IMPORTANT**: This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee’s work authorization or immigration status.
NO-MATCH LETTERS ARE NOT…

- No-Match Letters are NOT notices about employee wrong doing
- No-Match Letters are NOT notices about an employee’s work authorization
WHAT DOES AN SSA NO-MATCH LETTER SAY ABOUT A WORKER’S IMMIGRATION STATUS OR WORK AUTHORIZATION?
NOTHING!!!!
SSA Does Not Share Information

- There is no reason to think that an SSA no match letter will trigger an **IRS** investigation of the employee or employer.
- While **DHS** has tried to get access to SSA’s no match records in the past – as recently as 2018 – SSA has always denied those requests due to the privacy protections that cover the records. If SSA were to begin sharing these no match records, that would likely be unlawful.
Employee Rights and No-Match Letter

- The employer should not discipline or fire a worker only because they received a no-match letter with their name.
- No-match letter states very clearly that employers are not supposed to “take adverse action” against a worker solely because information about him/her appears in the no-match letter.
- The employer should not take any adverse action, including firing, changing work assignments, or reducing pay based on a no-match letter.
- An employer that does so may be violating the law.
Employer Response to No-Match: SSA Guidance

- Inform the employee of the discrepancy and ask her to resolve the issue with SSA.
- If an employee is unable to resolve the issue, the SSA simply encourages employers to document their efforts to obtain the requested information and retain the documentation with payroll records for a period of three (3) years.
- No other action by the Employer is necessary.
SSA Guidance re No-Match

- Found at the SSA’s website:
- The SSA’s SSNVS Handbook at p. 27.
Duty to Bargain & SSA No-Match Letters

- An employer is required to bargain with the Union regarding the employer’s response to no-match letters.

- *Aramark Educational Services and UNITE HERE Local 26, 355 NLRB No. 11 (2010).*
Arbitration Decisions and No-Match

- Arbitrators have held that it is a violation of the just cause standard to discipline, terminate or take any adverse action against employees based on receipt of a no-match letter.

- See Aramark Facility Services & SEIU Local 1877, George Marshall (December 2005) aff’d Aramark Facility Services v. SEIU Local 1877, 533 F.3d 817 (9th Cir. 2008); Laborers’ Local Union No. 25 & Utility Concrete Products, Steven M. Bierig (October 31, 2008); Sodexo, Inc. v. UNITE HERE Local 17 (J. Flaglor 2010).
Union’s Response to No-Match Letters

- Request a copy of the no-match letter and list of impacted employees.
- Continue to enforce any contract language concerning SSA no-match letters.
- Demand that the employer bargain with the Union regarding the employer’s response to no-match letters.
A “No-Match” letter from the Social Security Administration shall not itself constitute a basis for taking adverse action against an employee or for requiring an employee to re-verify work authorization. The Employer shall promptly forward a copy of any “No-Match” letter that it receives to the Union and to affected employee(s).
Sample No-Match Contract Language

- Social Security No-Match Letters. In the event that the Employer receives notice from the Social Security Administration ("SSA") that one or more of the employee names and Social Security numbers ("SSN") that the Employer reported on the Wage and Tax Statements (Forms W-2) for the previous tax year do not agree with SSA's records, the Employer agrees to the following.

  1. the Employer agrees that it will not take any adverse action against any employee listed on the notice, including firing, laying off, suspending, retaliating, or discriminating against any such employee, solely as a result of the receipt of a no-match letter, and
2. the Employer agrees that it will not require employees listed on the notice to bring in a copy of their Social Security card for the Employer's review, complete a new I-9 form, or provide new or additional proof of work authorization or immigration status, solely as a result of the receipt of a no-match letter, and

3. the Employer agrees not to contact the SSA or any other governmental agency, solely as a result of receiving a no-match from the SSA.
Union’s Response continued

- Remind the employer that it should take no adverse action against any employee based on the no-match letter.

- Ensure that the employer follows the proper response of:
  - notifying the employee,
  - correcting any information provided by the employee,
  - making a note in his/her file, and
  - Nothing more.
Union’s Response with Members: No-Match

- Inform members of the purpose of the no-match letters
- Inform members of the employer’s obligation to bargain with the Union
- Consider hosting a know your rights and information session with members concerning the no-match letters
- Remind workers that the no-match letter is not a statement about work authorization or immigration status.
- Remind workers of their right to remain silent and to have a Union representative present with management
Non-Union Employee’s Response to No-Match

- Present their employer with a letter requesting more information.
- Ask their employer for a copy of the original no-match letter.
- Ask their employer when the company received the no-match letter. If it received the letter some time ago, ask why it is just informing them now.
- Review the information contained in the W-2 form (that their employer originally submitted for them), if possible, and provide any needed corrections.
Employee response to no-match

- Tell their employer that they want a coworker, community advocate, or union representative present in any meetings with management about the letter.
- If they are represented by a labor union, immediately contact their union representative. Their union contract with the employer may give them more rights if they are listed in a no-match letter.
- Attend worker meetings on no-match and get workers involved.
- Contact the Union or community organization if they feel that they have been singled out because of their citizenship status or national origin, or if they feel their boss is retaliating against them.
Case Study: Food Processing Plant

UFCW Local 770
I-9 AUDITS

Helpful tips for Unions
Weinberg, Roger & Rosenfeld
Immigration Reform and Control Act of 1986 (IRCA)

- It is unlawful for employers to “knowingly”* hire unauthorized workers.
- Upon hire, all US employers must verify the identity and eligibility to work of all new hires – both citizen and noncitizen.
- Requires completion and retention of USCIS Form I-9 and to make available for inspection.
- Violations result in penalties to the employer and potentially to individuals.
What is an I-9 Audit?

- Inspection by federal agency to make sure employers are complying with federal immigration law.

- Employers are required to keep I-9 records on file for 3 years after hire or 1 year after employment ends, whichever period of time is greater.

- Employers must make the records available for inspection by the Department of Homeland Security (DHS), the Department of Labor (DOL), and/or the DOJ Immigrant and Employee Rights Section (formerly Office of Special Counsel (OSC)).
What is an I-9 Audit?

- DHS typically gives Employers a 3-day notice to inspect. Failure to comply is a violation of federal immigration law.

- DHS inspects I-9 forms and checks whether the forms completed correctly and also reviews the information contained in those forms.

- DHS can also investigate an employer’s hiring practices.
What is an I-9 Audit?

- At the conclusion of the audit, DHS may issue its results and serve the employer with a notice, such as:
  - Notice of Inspection Results
  - Notice of Suspect Documents
  - Notice of Intent to Fine
What is an I-9 Audit?

- If an employer fails to correct the discrepancies, or continues to employ a worker knowing that the worker is not authorized to work, DHS can issue sanctions against the employer.
I-9 Audit & Duty to Bargain

- Employer must bargain with Union regarding I-9 audit.
- August 27, 2018, the Board issued a decision upholding the application of federal labor law to information that an employer receives as a result of a government I-9 audit and to employer registration for E-Verify.
California law & I-9 Audits

- Labor Code 90.2 (AB 450)
- Within 72 hours of receiving NOI, employer must notify employees by posting a notice and notify the Union.
- https://www.dir.ca.gov/DLSE/Notice_to_Employee.html
- An employer, upon reasonable request, shall provide an affected employee a copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms.
NOTICE TO EMPLOYEE

Labor Code section 90.2

Effective January 1, 2018, except as otherwise required by federal law, section 90.2(a)(1) of the California Labor Code requires employers to provide notice to current employees of any inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency by posting a Notice, in the language the employer normally uses to communicate employment-related information to the employee, within 72 hours of receiving notice of the inspection.

Name of the Immigration Agency Conducting the Inspection (more than one box may be checked, as appropriate):

☐ ICE (Immigration and Customs Enforcement)
☐ DHS (Department of Homeland Security)
☐ USCIS (United States Citizenship and Immigration Services)
☐ Other:

__________________________________________
Date the Employer Received the Notice of Inspection:

__________________________________________
Date the Inspection will be Conducted:

Location of the Inspection:

☐ At the employer’s place of business or worksite, located at the following address:

__________________________________________

☐ At a location other than the employer’s place of business or worksite

Subject of the Inspection (to the extent known, check all that apply):

☐ I-9 forms
☐ Payroll records and data (including employee names, social security numbers, hire dates)
☐ California Quarterly Contribution Return and Report of Wages (form DE3 or DE6)
☐ Quarterly Wage and Hour Report
☐ Any list of employees (including names, social security numbers, birth dates, hire dates, etc.)
☐ Any correspondence from the Social Security Administration regarding mismatched or non-matched social security numbers
☐ Documentation or correspondence identifying participation in E-Verify or the Social Security Number Verification Service
☐ Other information or documents listing or identifying employees or their personal information (please briefly list and describe):

__________________________________________

A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms, and any accompanying documents, must be posted or given to employees with this notice.

DLSE-NTE 90.2 (1/2018)
Labor Code 90.2: Notice of Audit Results

- Within 72 hours of receiving audit results, employer shall provide notice results to each affected employee.
- Notice by hand, or if not possible, by mail or email

Notice must include:

1. Any deficiencies identified;
2. Time for correcting;
3. Time and date of any meeting with the employer;
4. Notice of right to representation at any meeting.
Union Response to I-9 Audit

- Confirm it is a government-directed I-9 audit and not an employer self or internal audit. **Labor Code 90.2** Requires Employer provide Union Notice and post notice to employees.

- Demand that the Employer bargain with the Union over audit.
  - Notice & Copy to Union of Audit results – now required by **AB450**
  - Bargain over time for reverification and manner
  - Bargain for severance or reinstatement rights for workers who cannot provide work authorization documents at that time

- Educate Union staff and workers about audit & process.
Response to I-9 Audit & Impact

- Hold an immigration clinic & refer workers to immigration counsel.

- Determine if audit is interfering with labor dispute or retaliatory based on DHS-DOL MOU & Addendum or 2016 DHS Memo.

- Workers may get arrested as a result of an audit

- Worker may be criminally prosecuted as a result of an audit
I-9 Audits and Do’s & Don’ts

- Same rules apply for Union staff and stewards regarding I-9 Audits
- **DO** inform members of their rights to remain silent
- **Do** inform members of their right to speak to an attorney
- **Do** inform members of the I-9 Audit process and the employer’s obligations
- **Do NOT** encourage members to violate the law, use false documents, etc.
- **Do NOT** provide legal advice
- **Do Represent** them in every step of the process with the Employer
Case Study: Poultry plant
Reverificatin

Practical Tips for Unions
I-9 Process & Reverification

- Employers are required to verify identity & work authorization documents for new hires.
- Reverification is when an employer verifies identity and work authorization after hire.
- Reverification is required for expired documents, but not a lawful permanent resident card with an expiration date.
Member calls you and says that his supervisor asked to verify his work authorization documents because his work permit (employment authorization document) expired.

Can employer reverify?
Expired work permit

- What do you do if the member did not renew or has not received her renewed work permit and the employer has threatened to fire the member?
Duty to Bargain over Immigration Issues

- All statutory employees enjoy Section 7 rights without regard to their immigration status. See Sure Tan, Inc. v. NLRB, 467 U.S. 883, 892 (1984).

- Moreover, employers are required to meet and consult with the union regarding treatment of employees on potential immigration issues. See Nortech Waste and Operating Engineers Local Union No. 3, 336 NLRB 554, 569-570 (2001) (an employer must bargain with the Union regarding the treatment of employees with alleged immigration issues). See Aramark Educational Services and UNITE HERE Local 26, 355 NLRB No. 11 (2010).
Sample CBA LANGUAGE

- Employer shall reinstate to the layoff list, with original seniority, any employee who was terminated for work eligibility issues and who returns with verifiable documentation within six (6) months of the date of termination.
Sample CBA Language

- In the event that an employee is not authorized to work in the United States following his or her probationary period and his or her employment is terminated for this reason and the employee subsequently corrects the problem within six (6) months, the employee shall be rehired into the next available regular position with seniority reinstated, at a rate appropriate to the employee’s seniority.
Expired work permit

- What do you do if you don’t have CBA language, the member’s work permit has expired, and the employer has fired the member?
Expired work permit

- Bargain for unpaid leave of absence until obtain renewal. Show the employer proof of application of renewal.
Reverification

- Required when the Employer has “constructive knowledge” that employee is not authorized to work.

- “Positive information” that employee is unauthorized:
  - Notice from DHS that employee suspected of being undocumented
  - Rumors are not enough
I-9 Process & Reverification

- No reverification required when expectation of continued employment, including: lay off; strike or labor dispute; reinstatement after disciplinary suspension or wrongful termination.
Union Response to Reverification – where represent members

#1: Determine if reverification is due to a government DHS audit or an employer self or internal audit.

#2: If internal audit, demand that the employer bargain with the Union over any reverification not required by law.

#3: Request information over reason and scope of audit.

#4: Determine if retaliatory or discriminatory.
Reverification

- Document how employer is conducting the reverification?
- Is the employer treating employees differently based on race, citizenship status, or national origin differently?
- For eg., workers perceived to be U.S. citizens are not required to present documents for reverification, but Latinos must present documents.
Reverification

- Is the employer requesting that employees present certain specific documents?
  - i.e. green card and social security card
- Is the employer asking for more or different documents even after employee presents documents satisfying reverification requirements?
Reverification hypo

A member informs you that he has updated his legal status and now has new documents that he wants to show to his employer.

Q #1: Can worker update his information?

Q #2: Can employer reverify the member’s work authorization documents?
Sample CBA Language Update information

- **Change of Name or Social Security Number**

Employees shall not be discharged, disciplined or suffer loss of seniority or any other benefit or be otherwise adversely affected by a lawful change of name, Social Security number, or employment authorization document, and in compliance with statutory requirements such legal change of name, Social Security number, or employment authorization document shall not be considered a change of employment nor an interruption of continuous employment.
Update information

- What if there is no applicable CBA language and the member comes to you and asks for help in updating her information?
Cal. Labor Code 1024.6

Employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee because the employee updates or attempts to update his or her personal information based on a lawful change of name, social security number, or federal employment authorization document.
Questions??