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SMITH MOORE LLP
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“No-Match” Letters No Longer Mean No Answers

Employers have become all too familiar with letters from the Social Security Administration (“SSA”) notifying them that Social Security numbers provided by their employees do not match the SSA’s records. These “no-match” letters have not, however, given employers much guidance on how to handle the discrepancies, leaving employers concerned over discharging those named.

Now, the federal government has released its no-match regulations, intended to clarify exactly what action an employer should take. They may be found at www.ice.gov.

The regulations emphasize that no-match letters do not always indicate employee fraud or immigration violations. The SSA admits that the database it uses to confirm Social Security numbers is flawed, with over 17 million errors. The goal of the new process is to find the source of the mismatch, not simply to punish the employee or employer.

Therefore, as of September 14, employers are required to respond to a no-match letter as follows:

- Verify within 30 days whether the discrepancy is due to employer clerical error;
- Request that the affected employee(s) confirm the accuracy of the employer’s records;
- Require employees to resolve the discrepancy with the SSA;
- If one of these three steps resolves the issue, provide corrected information to the SSA;
- If the discrepancy remains after 90 days, attempt to re-verify within the next three days by completing a new I-9 that relies on documents other than the questionable Social Security number—all as specified on the I-9 form (except that the employee *must* present a document with a photo as well);
- If re-verification is not possible, the employer must discharge the employee or face sanctions from Immigration and Customs Enforcement.

If an employer *consistently* follows these steps through resolution or discharge, it should not face any resulting sanctions from federal immigration authorities and should be well-positioned to defend any resulting discrimination claims from employees.

TIP

The federal government’s new regulations on “no-match” letters provide employers with a road-map for how to respond to notice of faulty Social Security numbers. Adopting and consistently following a policy that tracks these rules should help avoid legal troubles.



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