

NCA Regulatory Alert: New Social Security “No-Match” Letter Regulations

The Department of Homeland Security (DHS) has published new regulations for employers who receive a Social Security Administration (SSA) “Employer Correction Request” – commonly known as a No-Match letter. These letters are sent to employers indicating that the name and Social Security number of an employee do not match SSA records for that employee. In some cases, this could mean that the employee is an illegal alien working in the United States.

Pursuant to federal law, it is illegal to knowingly hire or continue to employ an illegal alien. By sending a No-Match letter, the government places an employer on notice that it may have an illegal alien on the payroll and that the employer may be prosecuted if it does not take “reasonable steps” to determine if that employee is illegal.

These new regulations outline the “reasonable steps” an employer must now follow after receiving a No-Match letter. By so doing, the employer will be granted protection from prosecution even if the employee is later determined to be illegal. If an employer fails to follow these steps, it could be subject to prosecution for hiring or continuing to employ an illegal worker.

Therefore, if any NCA member receives a SSA No-Match letter, that club should immediately do the following:

1. Promptly review the employee’s employment documents to determine whether there is a typographical, transcription or similar clerical error on the payroll information or in any communication with SSA. If there is such an error, the employer should make the necessary changes with SSA. The employer will have thirty (30) calendar days from the date it received the No-Match letter to complete this process.
2. If the employer determines it has not made an error, then the employer must ask the employee to confirm the accuracy of the information he gave when he was hired. If the employee finds the problem, he must submit the change to the employer who will make the necessary changes with SSA. The employer must notify the employee of the date it received the No-Match letter and advise the employee that he will have ninety (90) calendar days from that date to complete this process.
3. If the employee determines that the information he gave is correct, then the employer must ask the employee to pursue the matter with SSA. This means that the employee will need to go to a local SSA field office and provide those officials with additional information. The employer must notify the employee of the date it received the No-Match letter and advise the employee that he will have ninety (90) calendar days from that date to complete this process.
4. If the discrepancy is not resolved within the full ninety (90) day period, the employer has three (3) additional calendar days within which to complete a new Form I-9 and verify that the employee is authorized to work in the U.S. just as if the employee were newly hired. Naturally, no document containing the employee’s Social Security number may be used and a document with a photograph must be used. Thus, the employer has ninety-three (93) calendar days from the date it receives the No-Match letter to complete this entire process.

5. If the new I-9 information does not resolve the issue, then the employer must terminate the employee or risk being prosecuted for continuing to employ an individual it has constructive knowledge is illegal.

The new regulations also discuss what to do if an employer receives a DHS “Notice of Suspect Documents” letter. This letter functions the same as a SSA No-Match letter and the employer will receive the same protection from liability if it:

1. Promptly contacts the local DHS office and tries to resolve the issue. The notice will provide additional information regarding this process. This must be done within thirty (30) calendar days from the date of receipt of the notice.

2. If the employer cannot verify the work eligibility status of the employee within ninety(90) calendar days from receiving the DHS notice, then the employer will have three (3) additional calendar days within which to complete a new Form I-9 (with the same restrictions as the SSA No-Match rules).

3. If the new I-9 information does not resolve the issue, then the employer must terminate the employee or risk being prosecuted for continuing to employ an individual it has constructive knowledge is illegal.

Upon satisfactory resolution of either a SSA No-Match letter or DHS notice, the employer must place the government’s documentation verifying that the employee is legal and authorized to work in the U.S. in the employee’s personnel file and maintain it along with all other employment documents.

As employers work through the steps listed above, they should document their efforts by printing computer screens to record their actions with SSA and DHS. By retaining emails, computer generated printouts and any other correspondence, an employer will have a paper trail to help prove that it followed these new regulations as required.

These new rules are designed to protect an employer from being prosecuted for unknowingly employing an illegal alien. Therefore, as long as an employer follows these steps, it should be free from prosecution. Of course, if an employer has actual knowledge that an employee is illegal, nothing it does will protect it from prosecution.

These new regulations were published in the Federal Register today, August 15, 2007, and they go into effect September 14, 2007.

Employers have an obligation to hire only legal workers and they must take action when the federal government notifies them that they may have employed unauthorized aliens. While complying with these new regulations may be time consuming, such compliance will minimize potential liability when the government believes an employer is using illegal aliens – and it will be far less time consuming than defending a federal lawsuit.

After reviewing these procedures, please feel free to contact Brad D. Steele, Vice President of Government Relations at steele@nationalclub.org or toll-free at 800.625.6221, to discuss any questions you may have.