CLIENT ALERTS & INSIGHTS

# Watch for "No Match" Letters to make a Resurgence in 2019

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Authors: Margarita S. Krncevic

Employers may recall the "no match" rule most recently from the George W. Bush administration's efforts to strengthen the enforcement of U.S. immigration laws. The Social Security Administration (SSA) sends "no match" letters to employers who submit W-2 forms with names and social security numbers for employees that do not match the SSA's database information. A "no match" can result when an employee provides a fake social security number to an employer. The practice of sending "no match" letters became inactive during the Obama administration as the E-Verify system expanded and became the preferred method for confirming worker eligibility.

But, in an era where the number of workplace raids, detentions, and deportations continue to increase, it should come as no surprise that employers will once again start receiving "no match" letters in 2019. In fact, during a workplace raid, the Department of Homeland Security can ask an employer for "no match" information.

Nevertheless, employers should take care not to immediately terminate employees with "no match" letters. Doing so puts an employer at risk of being sued, including for claims of national origin, race, or citizenship discrimination. Accordingly, do not ask employees to re-verify their I-9s based only on "no match" letters. And, do not automatically assume that your employee is not authorized to work in the U.S.

"No match" letters also can result from legitimate clerical errors, failures to report a name change due to marriage or divorce, or even identity theft. Employers should therefore compare the "no match" information with their own personnel records to identify any errors and report them. If no errors exist, employers should advise their employees to contact the SSA directly to update their records. Employers also will need to comply with the requirements outlined in the "no match" letter for updating and resolving discrepancies.

In prior guidance, thirty-days was considered a reasonable period of time for employers or employees to take steps to correct discrepancies, and 90 days was the maximum amount of time permitted for resolution. The Trump administration may move towards shortening the period to resolve discrepancies from 90 to 60 days. Employers should always document their efforts to resolve any "no match" issues and apply procedures for handling these letters uniformly to all affected employees.

**For more information on this topic, please contact:**

**Eric Biasden** at ebaisden@beneschlaw.com or 216.363.4676

**Alan Rothenbuecher** at arothenbuecher@beneschlaw.com or 216.363.4436

**Margarita Krncevic** at mkrncevic@beneschlaw.com or 216.363.6285