

Many employers are unsure of what to do when they find out that an employee's name does not match his/her social security number (SSN). This can turn up from a routine background check on a new employee, or through a notification from the Social Security Administration (SSA). The following information will help clarify employers' responsibilities and liabilities in this situation.

### Obtaining an Employee's SSN

An employer has two uses for a SSN when a new employee is hired:

- 1) to report earnings to the IRS, and
- 2) to establish eligibility to legally work in the United States (Form I-9).

When an employee fills out Form I-9, they have the *option* of supplying different forms of identification, one being a social security card. However, an employer cannot specifically ask for a social security card. Let the employee decide what information to use to complete Form I-9; don't ask for the SSN as part of the I-9 process.

Do, however, ask for the SSN as part of employment enrollment, along with, for example, the W-4 form. When you get the I-9, you *may* but are not *required* to verify that the employee's name and SSN match. If you verify for one employee, verify for all employees. Treat everyone the same.

### No-Match Notification – What To Do

#### Overview:

The SSA stopped issuing "No-Match" letters in April of 2021. The SSA is now using its [Business Services Online](#) (BSO) portal instead of EDCOR letters (i.e., the No-Match Letters) to notify employers of Social Security number mismatches, allowing them to correct errors electronically in real-time rather than receiving paper letters. Employers are now expected to use the BSO portal to identify and fix any discrepancies with employee Social Security numbers. This system aims to provide immediate feedback to employers when submitting wage reports, allowing them to correct issues promptly. BSO also provides a [Social Security Number Verification Service](#) (SSNVS) that permits an employer to verify an employee's name and SSN in SSA's records in advance of filing annual Form W-2 submissions.

A BSO no-match is not an indication of an employee's work eligibility status, and the SSA takes no specific actions other than to request that the employer try and resolve the no-match and assure proper crediting of social security contributions. **A no-match notification should not be used by an employer to take any adverse action against an employee, including termination of employment.**

#### Within 60 days of a BSO no-match:

The employer must check its records to determine whether the discrepancy results from an unreported name change, typographical error, or inaccurate or incomplete employer records. If the discrepancy is caused by such an error the employer must correct the error with SSA by submitting a Form W-2C online through BSO. Employers should make a record of the manner, date(s), and time(s) the verification was made, and retain the record.

If the discrepancy was not caused by an error in the employer's own records, the employer should promptly confirm with the employee that the name and SSN in the employer's records are correct. If the employee indicates that the employer's records are incorrect, then the employer should correct its records online with SSA through BSO and verify that the employee's name and SSN now match SSA's records.

### Potential Grounds for Termination

If the employee admits to using a social security number that does not belong to them, this can be grounds for termination – the employee has admitted to falsifying your employment documentation.

Employers cannot be held liable for documents that appear to be authentic, unless they *knowingly* are aware they are fraudulent. As long as employers follow the Form I-9 procedures to the best of their abilities, they should not have any additional liabilities based solely on a SSA no-match. (See UCON's [Form I-9 Guidelines](#) for more information.)

## ADDITIONAL FREQUENTLY ASKED QUESTIONS

- Q:** *Do you have to pay an employee for hours worked, even if s/he admitted to using a false social security number?*
- A: Yes. All California workers – whether or not they are legally authorized to work in the United States – are protected by California state laws regulating wages and working conditions. Wages and fringes need to be paid as usual; however, if this is a union employee, make a note on the monthly report that this particular SSN is a mismatch. These funds will go into a “dummy” account where the employee can later come back with a valid SSN if s/he wants the funds to go to them.
- Q:** *Is it okay to perform background checks?*
- A: Generally, yes. However, you do not want to discriminate against employees on the basis of nationality, language, national origin, race or any other protected class. Background checks (including any criminal background checks) must be performed in accordance with multiple, strict state, federal and local law requirements. You will also want to verify any prohibitions or limitations in union agreements. We strongly recommend consulting with legal counsel if you plan to use background checks on job applicants or current employees.
- Q:** *How do I know for sure that the documents presented by an employee are not fraudulent?*
- A: Employers are not required to be experts on determining if a document is fraudulent or authentic. All that immigration law requires is that employers **not knowingly hire or continue to employ an unauthorized worker** [8 U.S.C. §1324 (a), United States Code]. The USCIS Handbook for Employers ([M-274](#)) has sample photos of different types of acceptable documents, which may be helpful when dealing with documents you are not familiar with.