



Virginia Workplace Law

They're Back – Social Security No-Match Letters

By: Karen Elliott. *This was posted Wednesday, April 20th, 2011*

Remember just month's ago when political opponents [attacked California gubernatorial candidate Meg Whitman](#) over the social security no-match letter she received in the early 2000's regarding her maid? Many employers may have wondered just what those letters were all about, because for the past three years, the Social Security Administration stopped sending them out. As the saying goes, "[They're Back](#)," and if you are an employer, you need to be concerned.

Employers will once again have to worry about "getting it right" upon receipt of a no-match letter. And, unfortunately, once again, there are only questions, and no clear answers.

The government states [it will send a letter](#) when employee information on the W-2 Form is either incomplete or a reported name or Social Security number does not match with the government's records. [The letters will be sent on an employee by employee basis.](#) (In the past the Social Security Administration sent the employer a letter with a listing of names that had a number mismatches.) According to the administration, the new letters will be sent when the government is unable to reach the individual directly about the discrepancy.

The new process is replete with legal issues for the employer. The letter tells the employer to first compare the information listed on the government's letter to the employer's records. If the records match, the employer is directed to "ask" the employee to give the name and Social Security number exactly as it appears on the employee's Social Security card. Then, the form notes "(While the employee must furnish the SSN to you, the employee is not required to show you the Social Security card. But, seeing the card will help ensure that all records are correct.*)" If there is a problem between the government's records and the social security information given/shown by the employee, then the employer is directed to tell the employee to contact any Social Security office.

The question for the employer now becomes, what do you do?

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First, as you may recall, you are not allowed to ask employees for their social security card as part of the [I-9 process](#). Now, you are being requested to “ask” for the information, and the suggestion is strongly made that you look at the card. There are no good answers yet, but here are a few tips to consider if you get these letters:

1. Don't rely on a copy of the card in your records if you did receive it for I-9 purposes.
2. If you are going to ask for the actual SSI card, you need to make sure you always ask for the card from each employee who is the subject of the no-match letter. Asking only employees of a particular race or culture would be discriminatory.
3. If you decide to always ask for the card, then either always make a copy of the card, or never make a copy of the card. Whatever you decide, be consistent.
4. If the card looks fake, you are probably now on notice that the employee is not lawfully working. If you have reason to believe the card is fake, hope that the employee doesn't show up to work again. If the employee returns to work, you will need to determine what next steps you may legally take to determine their status.
5. If you determine that the Social Security card does not show the employee's correct name or Social Security number, or there is some other error, you must direct the employee to any Social Security office.

Unfortunately, the letter is completely silent about how long the employee has to correct the problem, and what you are to do if the problem remains uncorrected. On the other hand, you are directed by the letter to start using the correct name or Social Security number if you determine either is incorrect. So, how do you get the correct information? Stay tuned.....

If you need assistance with issues arising from receipt of the no-match letters, the [Virginia Employment lawyers](#) at Sands Anderson will be pleased to hear from you.

We'd also like to know what you think. What problems do you anticipate these letters will present for you?

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