

# FACTS ABOUT Internal Revenue Service No-Match Letters

---

July 2009

## ■ What is an IRS no-match letter?

The Internal Revenue Service (IRS) sends a notice to employers when the information they receive regarding tax withholdings for employees does not match information in the IRS database. The two main reasons an employer might receive an IRS no-match letter are (1) missing or incomplete Social Security number (referred to by the IRS as a “tax identification number,” or TIN) or (2) missing or incomplete employer identification number (EIN). Much as the Social Security Administration (SSA) no-match letter is, this is an attempt by the IRS to reconcile the information an employer is submitting and the information the government has in its database. An IRS no-match letter does not make any statement about a worker’s immigration status or the worker’s employment authorization.

Unlike SSA no-match letters, the IRS no-match letter provides for a penalty if the employer does not respond to it. The employer could face a \$50 fine per employee if the employer does not act on the IRS notice and resubmit a corrected W-2 form for each employee named in the notice. However, as is described below, the IRS also has a “safe harbor” procedure for employers to follow in order to have the penalty waived.

## ■ Misuse of the IRS no-match letter program by employers

Increasingly, employers are using the receipt of an IRS no-match letter as an excuse to take adverse employment action against workers. As with SSA no-match letters, employers are using the receipt of IRS no-match letters as an excuse to fire workers. Employers claim that the receipt of these letters constitutes reasonable suspicion that a worker is unauthorized to work, when in fact there could be several reasons why information an employer has provided does not match IRS records — for example, misspellings, clerical errors, or name changes because of marriage or divorce.

During these tough economic times, some employers appear to be misusing IRS no-match letters in order to downsize their workforce while bypassing seniority rules or avoiding having to comply with collective bargaining agreements.

## ■ What advocates need to know about IRS no-match letters

The IRS provides employers with information about a “safe harbor” procedure they can follow when they receive IRS no-match letters. If employers follow these simple rules, they can establish a “reasonable cause exemption” from the monetary penalties. Under this procedure, employers are required to do the following:

1. Request the employee’s correct Social Security number at the time of hire in order to complete a W-4 form for the employee.



**LOS ANGELES** (Headquarters)  
3435 Wilshire Boulevard  
Suite 2850  
Los Angeles, CA 90010  
213 639-3900  
213 639-3911 fax

**WASHINGTON, DC**  
1444 Eye Street, NW  
Suite 1110  
Washington, DC 20005  
202 216-0261  
202 216-0266 fax

2. If the employer receives an IRS no-match letter about an employee, ask the employee for correct information no later than December 31 of the year the employer receives the IRS no-match letter. The employer should keep a record of its attempts to secure corrected information from the employee.
3. If the employer receives another IRS no-match letter for the same worker, make a final request for correct information. The employer should keep a record of its attempts to secure corrected information. For example, if the employer receives an IRS no-match letter for worker X in the year 2009, then the employer should follow step 2, above, no later than December 31, 2009. A responsible employer that receives a second letter in 2010 for worker X should make a second request to X for correct information no later than December 31, 2010.
4. Notify IRS of their attempts to secure correct information from workers about whom they receive no-match letters.

If the employer follows these simple steps, it may benefit from the “safe harbor” and have any financial penalty waived, since it is acting in a responsible manner. To be granted a waiver of the financial penalty, employers need make only two annual solicitations for information.

**Employers should not fire workers to avoid a financial penalty, since this can result in liability under employment, labor, and civil rights laws.**

### ■ Other important facts immigrant worker advocates need to know

- The 9th Circuit Court of Appeals has ruled that receipt of an SSA no-match letter about a worker is not “just cause” for firing the worker when the worker is covered by a collective bargaining agreement. This could be helpful in persuading an employer that it lacks the legal grounds to fire workers who are named in IRS no-match letters.
- Receiving a notice from SSA that information submitted to it about a worker does not match its records does not mean that the employer is facing a penalty from the IRS, since the two agencies use separate databases.
- Signing up for one of the government’s electronic employment eligibility verification systems will not absolve employers of any financial penalty from the IRS, if they receive an IRS no-match letter. Only employers that follow the “safe harbor” procedure outlined above qualify to have the monetary penalty waived by the IRS.

### ■ Resources

- The IRS manual for dealing with no-match letters can be found at [www.irs.gov/pub/irs-pdf/p1586.pdf](http://www.irs.gov/pub/irs-pdf/p1586.pdf).

---

### FOR MORE INFORMATION, CONTACT

Michael Muñoz, program coordinator | [munoz@nilc.org](mailto:munoz@nilc.org) | 213.639.3900 x. 117