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## **Social Security Administration Resumes Issuance of “No-Match” Letters to Employers**

In April 2011, the Social Security Administration (SSA) resumed sending “no-match” letters to employers when a worker provides a name and social security number that does not match SSA records. No-match letters were routinely sent to employers until 2007, when the Department of Homeland Security (DHS) issued a final rule setting forth employers’ legal obligations upon receiving these letters. The DHS rule faced legal challenges and was never implemented. Although these legal challenges did not prevent SSA from sending no-match letters, SSA suspended issuance of these letters until recently.

### **How Are the New Letters Different From the Previous Ones?**

SSA has made a number of changes to the language and format of the employer no-match letters. Previously, no-match letters listed multiple employees and asked the employer to address all instances in a single response. SSA now issues a separate letter for each employee. The new letter also provides that while an employer response is not required, failure to do so may prevent SSA from crediting the employee with the correct amount of wages. Additionally, the letter states that SSA may report non-responses to the Internal Revenue Service for tax administration purposes or to the Department of Justice for investigating and prosecuting violations of the Social Security Act.

### **How Should Employers Respond to a No-Match Letter?**

A no-match letter may result from a number of factors, including changes in the employee’s personal information or typographical errors. Using the letter as a basis for taking adverse action against the employee, such as suspension or termination, may violate state or federal law. To resolve the discrepancy, the employer should promptly verify the accuracy of its records and communications with SSA. If there are no inaccuracies, the employer should consult with the employee to confirm that the name and number on the employer’s records matches the data on the employee’s social security card. If the employee’s social security card contains incorrect information or an error cannot be identified, the employer should refer the employee to the local SSA office to resolve the issue within a reasonable amount of time. Once the issue has been resolved,

the employer should respond to the no-match letter using the procedures outlined in the letter. Employers should then verify that the issue has been resolved by contacting SSA at 1-800-772-6270 between 7 a.m. and 7 p.m. EST. Employers are advised to adopt a policy that ensures consistent, timely and non-discriminatory handling of all no-match letters.

### **What Are the Possible Consequences of No Action?**

The 2007 DHS final rule stated that failure to act after receiving a no-match letter could show that the employer had constructive knowledge that it was employing an unauthorized worker. Although this rule has been repealed, Immigration and Customs Enforcement (ICE) regularly requests copies of all no-match letters during Form I-9 audits. ICE has also stated that no-match letters have been used to identify employers that were later subject to criminal investigations on charges of harboring or knowingly hiring unauthorized aliens.

### **About Honigman's Business Immigration Practice Group**

In this increasingly global economy, it is essential for United States companies to secure and retain multinational talent in order to maintain a competitive advantage. Honigman's business immigration attorneys are highly skilled in assisting companies in managing complex and ever-changing immigration processes to obtain temporary and permanent work authorization in the United States.

Honigman's immigration attorneys are highly experienced in handling business immigration matters for major publicly-traded and many privately-held companies. Our clients include biotechnology and pharmaceutical companies; Tier 1 and Tier 2 automotive suppliers; health care providers; high technology companies; consulting firms; advertising agencies; and universities and colleges.

Our attorneys have counseled clients on immigration-related matters in numerous corporate acquisitions and restructurings to ensure that all employees, and in particular the highest-level executives and key employees of the company, do not incur a lapse in work authorization. Honigman's immigration attorneys understand and appreciate the sensitivity and professionalism required in dealing with large companies and the many stakeholders involved.