

ABC Article Reprint
Practical Guidance for Contractors
How to Handle Mis-Matched Social Security Numbers
Suggested Form Letters to Employees Attached

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Background

Immigration Laws: The Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, makes it unlawful for an employer to hire or continue to employ an alien *knowing* the alien is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements. Good faith compliance with the I-9 verification requirements establishes an affirmative defense that the employer has not violated the law unless the government can show that the employer had *actual knowledge* of the unauthorized status of the employee. An employer cannot refuse to honor documents which on their face reasonably appear to be genuine and to relate to the person presenting them. An employer must re-verify on the Form I-9 not later than the date the employee's work authorization expires. [See 1-9 Handbook for Employers M-274]

SSA Mismatch Letters. Each year since 1993, the Social Security Administration (SSA) has sent letters to employees and employers when the name/SSN reported by employer on Form W-2 does not match SSA records (SSA mismatch letters or Code V letters). The purpose of these letters is to ensure that wages are correctly reported and credited towards an employee's SSA benefits etc. The employer is not required to respond to the SSA letters.

SSA mismatch letters from the government state that the receipt of a mismatch letter is not itself a basis for firing an employee, is not a comment on the employee's immigration status, and should not be interpreted to mean that employee is unauthorized to work in the U.S. The letters caution that an employer who uses the information in the letter to justify adverse actions against the employee "may violate federal law and be subject to legal consequences."

- SSA letter says that employer should:
 - Compare the W-2 with the employment records
 - If W-2 doesn't match company records, employer should correct the W-2 on Form W2-C
 - If W-2 does match records, ask employee to check SS card to see if employment records need correcting; advise employee to inform employer of any name or number differences
 - Tell employee whose names and numbers do not match SSA records to contact nearest SSA office to resolve the problem and to advise you of any changes.

IRS Guidance. The IRC (26 U.S.C Section 6674) requires employers to file correct taxpayer identification numbers (TINs) or Social Security numbers on their employees' Forms W-2. There is a penalty of \$50 per missing or incorrect TIN unless waived. To get a waiver, an employer must show that the failure to report a TIN or a correct TIN was due to reasonable cause and not to willful neglect. IRS Publication 1586 provides that an employer must show it initially solicited the employee's SSN (by getting a Form W-4 signed) and then used the SSN the employee provided. The employer must re-solicit the SSN by mail, telephone, electronically or in person **only if it receives an IRS penalty notice (Notice 872CG)**. An employer that has made two solicitations in addition to the initial solicitation need not make any further solicitation of the employee even if it receives more IRS penalty notices based on the employee's missing or incorrect SSN.

Question: What is the appropriate employer response to be followed, upon receipt of a SSA mismatch letter, expiration of a work card, or receipt of an IRS penalty notice?

Dealing with SSA Mismatch Letters. First, check your records to ensure that you have correctly reported the SS information provided by the employee. If you find no mistake, send the employee **Letter #1** attached. If employee does not respond within time limit, send the employee **Letter # 2**.

In compliance with the your understanding of the antidiscrimination provisions of the Immigration laws, take further action only if you obtain information from additional sources or means that gives the Company "**actual knowledge**" that the SSN may be invalid, and that the employee is not currently authorized to work in this Country. In that case, take the step of seeking to verify the social security number with the SSA and take adverse employment action if indicated. Other sources or means of obtaining "**actual knowledge**" include, but are not limited to the following:

- In responding to the mismatch inquiry letter, the employee presents an ITIN (issued only to individuals who are not authorized to work in the U.S.).
- In responding to the mismatch inquiry letter, the employee presents an entirely different name or social security number.
- In responding to the mismatch inquiry letter, the employee presents a SSN currently being used by another employee.
- In responding to the mismatch inquiry letter, the employee presents a SSN out of sequence (meaning a number which falls outside the published list of sequence numbers from the SSA) or a form of documentation that would not be acceptable in performing the I-9 eligibility verification process (i.e., would you accept the documentation as valid for a new employee?).
- Another governmental agency, such as a child support agency, or a worker's compensation carrier gives you information that indicates that the social security number an employee provided is incorrect.
- An employee admits that the card is invalid.

In most cases, the appropriate action is to suspend the employee from work and give him/her written notice of the opportunity to present acceptable employment eligibility verification documentation (See **Letter #3**). Failure of the employee to present such documentation at the end of the suspension period should in most cases result in termination of the employee, or an extension of the suspension to allow the employee additional time to produce the required documentation. Termination would be based upon presentation of **“apparently false employment eligibility documentation.”** All letters and memos should be issued from the payroll department.

Immigration Laws. The Company should continue to abide by the I-9 requirements in all respects as outlined in the regulations and Handbook for Employers (M-274). With respect to work cards with a future expiration date:

- Notify employees in advance of the expiration date and remind them that they cannot continue to work unless you receive a permanent card or extension prior to the work authorization expiration date. See **Letter #4** attached. Upon receipt of the extension or new card, amend the I-9 or complete a new I-9.
- If the employee does not provide the new documentation by the expiration date or otherwise comply with the law, discharge the employee. (**Letter #5** attached)
- If in your audit you discover work cards which have already expired, immediately send **Letter #6** and suspend the employee. Discharge the employee if the new documentation is not provided just as in **Letter #5**.

Internal Revenue Code. Continue to require all employees to complete a Form W-4. Upon receipt of a penalty letter from the IRS requiring a re-solicitation of the information on the Form W-4, comply with IRS publication 1586.

Document, Document, Document. Because your defenses are based upon good faith efforts make sure and preserve all of your documentation.

Letter #1
[Name]
[Social Security Number as given]
[Address]
[City, State Zip]

PERSONAL AND CONFIDENTIAL- 1st Notice

Hand Deliver

[Date]

Dear _____:

The Social Security Administration (SSA) has provided a letter informing us that your name and social security number listed in the Company's payroll records does not match the name and social security number listed with the SSA. There may be a legitimate reason why there is not a match for your information. However, we need your cooperation in resolving this discrepancy. You may contact the Social Security Administration by calling toll free 1-800-772-1213.

Within seven (7) calendar days of receiving this letter, please verify that the name and social security number that you provided to us is exactly the same as the name and social security number on your social security card. Please fill in the requested information below and return a copy of the completed and signed letter to the Payroll Department. If it is not the same, then within 30 calendar days please provide us with a corrected social security card which we will then verify.

If you have any problems meeting this deadline, please feel free to contact the payroll department.

Thank you for your cooperation in this matter.

Print Name _____

Social Security Number _____

Signature _____ Date _____

cc: personnel file

Letter # 2
[Name]
[Social Security Number as given]
[Address]
[City, State Zip]

**PERSONAL AND CONFIDENTIAL
2nd AND FINAL NOTICE**

Hand Deliver

[Date]

Dear _____:

This is your second and final notice that the Social Security Administration (SSA) has confirmed that your name and social security number listed in the Company's payroll records does not match the name and social security number listed with the SSA. There may be a legitimate reason why there is not a match for your information. However, we need your cooperation in resolving this discrepancy. You may contact the Social Security Administration by calling toll free 1-800-772-1213.

Within seven (7) calendar days of the date of this letter please provide us with a corrected social security card.

Important Notice: Because this is the second notice that the Company has sent you regarding your mis-matched social security card number, your withholding on your next paycheck will be increased to the maximum amount until a new W4 form is received and the social security number verified. It is critical that take immediate action to provide the requested information to have this matter corrected.

If you have any problems meeting this deadline, please feel free to contact the payroll department.

Thank you for your cooperation in this matter.

cc: personnel file

MEMO

LETTER #3

TO: EMPLOYEE

FROM: Payroll Department

DATE: _____, 200__

**RE: NOTICE OF SEVEN DAY SUSPENSION TO PRESENT CORRECTED EMPLOYMENT
ELIGIBILITY DOCUMENTATION**

In response to a recent written request by the Company to provide corrective information relative to your mismatched Social Security Number, you have presented documents or information that leads the Company to question your current eligibility to work in this Country. Consequently, the Company is immediately suspending your employment for seven (7) days to give you an opportunity to present corrective documentation to either the Company's payroll department or your job superintendent.

Your failure to timely present corrective information to either the payroll department or job superintendent will suffice to give the Company actual knowledge that you are not currently eligible to work in this Country and your employment with the Company will be terminated based upon your presentation of false employment documentation. If you have a question, you may contact the payroll department.

Thank you for your cooperation.

CC: [supervisor]

MEMO

LETTER # 4

TO: EMPLOYEE

FROM: Payroll Department

DATE: _____, 200__

RE: ALIEN RESIDENT CARD TO EXPIRE ON _____, 200_

According to the information you have provided the Company, your alien resident card will expire on _____. In accordance with INS Regulations, to maintain continuous employment eligibility you must have a current alien resident card. Regulations require that you present a document that shows either an extension of your initial employment authorization or a new work authorization prior to the expiration date of your card. We will need to then reverify on the Form I-9 your ability to work once you present this new alien resident documentation.

If you fail to present this updated information to the Company on or prior to the expiration date of your card, the Company will have no choice but to suspend or discharge you from employment with the Company.

Thank you for your cooperation.

CC: [supervisor]

MEMO

LETTER # 5

TO: EMPLOYEE

FROM: Payroll Department

DATE: _____, 200__

RE: ALIEN RESIDENT CARD EXPIRED

According to the information you have provided the Company, your alien resident card has expired. In accordance with INS Regulations, to maintain continuous employment eligibility you must have a current alien resident card. Regulations require that you must present a document that shows either an extension of your initial employment authorization or a new work authorization. We will need to then reverify on the Form I-9 your ability to work once you present this new alien resident documentation.

Your Employment Is Suspended Effective Immediately Pending Receipt of An Updated Alien Resident Card, Or Extension Documentation.

FAILURE TO PRESENT THIS UPDATED INFORMATION TO THE COMPANY WITHIN 10 DAYS FROM THE ABOVE DATE WILL RESULT IN YOUR DISCHARGE FROM EMPLOYMENT WITH THE COMPANY.

Thank you for your cooperation.

CC: [supervisor]

MEMO

LETTER #6

TO: EMPLOYEE

FROM: Payroll Department

DATE: _____, 200__

RE: ALIEN RESIDENT CARD EXPIRED

According to the information you have provided the Company, your alien resident card has expired. In accordance with INS Regulations, to maintain continuous employment eligibility you must have a current alien resident card. Regulations require that you must present a document that shows either an extension of your initial employment authorization or a new work authorization. We will need to then reverify on the Form I-9 your ability to work once you present this new alien resident documentation.

Your Employment Is Suspended Effective Immediately Pending Receipt of An Updated Alien Resident Card, Or Extension Documentation.

FAILURE TO PRESENT THIS UPDATED INFORMATION TO THE COMPANY WITHIN 10 DAYS FROM THE ABOVE DATE WILL RESULT IN YOUR DISCHARGE FROM EMPLOYMENT WITH THE COMPANY.

Thank you for your cooperation.

CC: [supervisor]