

Form **W-2**

Form

Copy 1 – For State, City, or L

Wage and
Statement

RESTAURANT
LawCenter
National Restaurant Association



General Guidance on “No-Match” Letters from the Social Security Administration

May 1, 2019

What’s a ‘no-match’ letter?

The Social Security Administration (SSA) will send so-called ‘no-match’ letters to employers when information in an individual employee’s W-2 form, Wage and Tax Statement, does not match the SSA’s records. To correct mismatches, the employer needs to submit [Form W-2c](#) (Corrected Wage and Tax Statement) through the SSA’s [Business Services Online](#) (BSO) Wage Reporting. BSO requires registration, but there’s no need to re-register if you already have a BSO User Identification Number (User ID). The BSO database also lets you know which employees show up as “mismatched.” The SSA requests responses within a 60 day period from the date on the notices.

What are some of the reasons there might be a “mismatch”?

Information on an employee’s W-2 form can differ from SSA data for a variety of reasons:

- An administrative error or typo by SSA staff, the employer, or the employee;
- Misspelled names, or errors reporting culturally based hyphenated or multiple surnames;
- Identity theft;
- Numbers reversed;
- An unreported name change due, for example, to marriage, divorce or naturalization; or
- Fraudulent social security card.

What is the purpose of a no-match letter?

According to the SSA, the agency uses no-match letters to obtain correct information to help the SSA identify the worker to whom earnings belong, and post the correct earnings to that employee’s earning records.

Receiving a no-match letter does not indicate that an employee intentionally provided incorrect information and should not adversely affect any employee’s employment. At the same time, however, U.S. Immigration and Customs Enforcement (ICE) routinely asks employers during I-9 audits whether the employer has received no-match letters. Accordingly, upon receipt of a no-match letter, employers should consider appropriate follow-up consistent with government instructions.

What should you do if you get a no-match letter?

- **Employers should not use the receipt of a no-match letter — or any objections an employee may raise about the employer’s no-match response procedures — as a basis to either retaliate against the employee or otherwise subject the employee to heightened scrutiny or any adverse employment action. Doing so may violate the anti-discrimination provisions of the Immigration and Nationality Act, other state/federal equal employment opportunity laws, and/or labor laws.**

General Guidance on “No-Match” Letters from the Social Security Administration

continued

- Compare the no-match letter information with your employment records. If you made a typographical error, correct the error and resubmit the corrected data through BSO. If the mistake involves a hyphenated name, consider trying different versions of the name.
- If your employment records differ from the information on the no-match letter, ask the employee to check his/her Social Security card and inform you of any name or SSN difference between your records and his/her card. If your employment records are incorrect, correct your records and resubmit the corrected data through BSO, other wage reporting corrections may be required, i.e. IRS.
- If your employment records and the employee's Social Security card match, ask the employee to check with any local SSA Office to resolve the issue. Once the employee has contacted the SSA Office, he/she should inform you of any changes. You should correct your records accordingly and resubmit the corrected data through BSO.
- If the employee is unable to provide a valid SSN, you are encouraged to document your efforts to obtain the correct information. Documentation should be retained with payroll records for a period of three (3) years. **Please note that you need to give the employee a “reasonable period of time” to resolve a no-match notice.**
- While not required, it is recommended that an employer schedule and document periodic meetings or other communications with the employee during the resolution period to stay on top of the employee's efforts to resolve the no-match. One example is to provide, and document, 30 day reminders. This will also help determine whether the employee needs more time to resolve the no-match than originally anticipated.
- If you are unable to contact the employee, you should document your efforts to do so.
- It is recommended that employers document all steps taken to resolve a no-match letter and the communications with the employee.

Who should you contact if you want more information or need additional help?

For more information on this document, contact Angelo Amador, Executive Director of the Restaurant Law Center at aamador@restaurant.org or (202) 492-5037. The Restaurant Law Center provides members of the National Restaurant Association free general information on frequently asked questions on this topic and may direct members to public websites where additional information can be obtained. However, the Restaurant Law Center cannot provide legal advice on a specific case. For direct and confidential legal advice, we recommend you contact one of the Restaurant Law Center's Law Firm Partners:



Megan Vogel
Davis Wright Tremaine LLP
meganvogel@dwt.com
206-757-8258



Jungmin Choi
Epstein Becker & Green PC
JChoi@ebglaw.com
973-639-5226



Michael H. Neifach
Jackson Lewis PC
Michael.Neifach@jacksonlewis.com
703-483-8325



Justin S. Coffey
Ogletree Deakins PC
justin.coffey@ogletree.com
919-789-3224



Jorge R. Lopez
Littler Mendelson PC
JLopez@littler.com
305-400-7504



Garen Dodge
Sheppard Mullin LLP
GDodge@sheppardmullin.com
202-747-1926



Pamela D. Nieto
Baker Hostetler LLP
pnieto@bakerlaw.com
713-646-1372

