

[Home](#) / NJDOL and Attorney General's Office Issue Guidance to Employers on "No-Match" Letters

# NJDOL and Attorney General's Office Issue Guidance to Employers on "No-Match" Letters

## FOR IMMEDIATE RELEASE

March 9, 2020

**TRENTON** – Attorney General Gurbir S. Grewal, Department of Labor and Workforce Development Commissioner Robert Asaro-Angelo, and Division on Civil Rights Director Rachel Wainer Apter today issued joint guidance to New Jersey employers concerning letters they may have received from the U.S. Social Security Administration (SSA) that flag discrepancies between some of their employees' names and Social Security numbers.

Resuming a practice it halted in 2007, the SSA began sending "Employer Correction Request" letters to tens of thousands of employers across the nation in March 2019. These "no-match" letters, which SSA continues to send, notify employers that information in their Form W-2s about one or more employees' names and Social Security numbers fail to match information on file with the SSA.

Many critics – including more than 45 members of Congress – have criticized the letters as a veiled attempt by the Trump Administration to target immigrant workers.

The State's guidance advises employers to avoid taking adverse action against an employee – including laying off, suspending, firing or discriminating against the individual – based solely on the fact that the worker's name is listed in a no-match letter. It also notes that an adverse action could violate state and federal law and subject employers to legal consequences.

The guidance also advises that employers must continue to pay an employee's wages for all work performed, even if they receive a no-match letter listing that employee's name and cautions that withholding a worker's pay on the basis of an SSA letter would violate state law.

"We are issuing guidance today to help New Jersey employers understand what these federal no-match letters mean and – just as importantly – what they do not mean," said Attorney General Grewal.

"In reviving the practice of sending out these letters – a practice set aside more than a decade ago – the federal government has created a great deal of confusion," Attorney General Grewal said. "Today's guidance is meant to protect the rights of New Jersey workers and to help employers avoid taking inappropriate or unlawful action on the basis of fear or misunderstanding."

"Our job is to protect workers by ensuring their rights to proper wages, equal pay, paid leave and other employee rights," said Labor Commissioner Robert Asaro-Angelo. "We enforce these laws for all New Jersey workers, regardless of being named in a no match letter, to bring security and dignity to work."

"Taking adverse action against an employee based on assumptions about the person's national origin is unlawful in New Jersey," said Division on Civil Rights Director Rachel Wainer Apter. "Employers should understand their obligations under state and federal law before taking any action based on a no-match letter. The Law Against Discrimination prohibits employers from discriminating against an employee because of the person's actual or perceived national origin, nationality, race or ethnicity."

In addition to advising employers that they should not take adverse action against an employee based solely on the fact that their name appears in a no-match letter, today's guidance explains that a no-match letter provides no information about an employee's immigration or work authorization status. The guidance notes that discrepancies between



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As of the latest reporting, more than \$33 billion in unemployment benefits have been sent to Garden State workers. With federal benefits set to expire on September 4, we encourage everyone to check your email and visit [MyUnemployment.nj.gov](https://MyUnemployment.nj.gov) for updates and available resources.



information reported to the SSA by employers and information contained in the SSA's own records can occur for a variety of reasons including "typographical errors, name changes, or errors either in the SSA's database or the employer's records."

Today's guidance further indicates that:

- Taking adverse action against an employee based on unfounded assumptions relating to national origin or other protected categories is unlawful discrimination in violation of New Jersey's Law Against Discrimination (LAD);
- Adopting a policy or practice of automatically taking adverse action against an employee based solely on the receipt of a no-match letter may constitute unlawful discrimination in violation of the LAD; and
- Employers have no legal obligation to re-verify an employee's immigration status based solely on having received a no-match letter that lists an employee's name.

Today's multi-agency guidance reminds employers that the Attorney General's Office, the Department of Labor and Workforce Development, and the Division on Civil Rights possess broad authority to investigate potential violations of New Jersey's LAD and Wage Payment Law, to initiate proceedings to protect the rights of workers, and to recover unpaid wages.

The guidance letter urges employers to review applicable laws to ensure they do not take illegal action in the wake of receiving a no-match letter regarding one or more of their workers.

"We will enforce the law according to its terms, and we will not tolerate wage theft or discriminatory practices against workers of any national origin, nationality, race or ethnicity," the guidance letter states.

The guidance letter also invites employers to contact the Division of Wage and Hour Compliance at (609) 292-2305 with any questions about compliance with state labor laws, or the Division on Civil Rights at (973) 648-2700 with questions about compliance with the LAD.

[← Go back to all press releases](#)

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Home

### File or Access Your Claim

Temporary Disability Insurance

Family Leave Insurance

Maternity Leave

Unemployment Insurance

Social Security Disability

### Worker Protections

Your Rights at Work

Workers' Compensation

Safety and Health

Wage & Hour Compliance

Paid Sick Leave

### Career Support

Career Services

## Employer Services

[Employer Accounts](#)  
[Layoffs and Closings](#)  
[Wage & Hour Compliance](#)  
[Business Support](#)  
[Apprenticeship](#)  
[Industry Partnerships](#)  
[Employer Handbook](#)  
[Employer Poster Packet](#)  
[Equal Pay Act Reporting](#)

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[Legal Notices](#)  
[Press Releases](#)

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