



KPB Immigration Law Firm

San Francisco (415) 777-4445

Los Angeles (323) 782-3877

Check **KPB website** for offices throughout the state

Article: Did your business get a letter from Social Security (SSA)? If so, you are not the only one.

By: Christopher A. Kerosky

Many North Bay businesses received a surprise in the mail recently: letters from the **Social Security Administration (SSA)** notifying them that certain social security numbers they reported for their employees do not match the SSA database. This has created concern among many local employers and their workers, who fear this might be the first step toward an investigation by ICE.

When these letters arrive, many undocumented immigrants choose to quit their jobs rather than face possible detention and deportation.

These so-called “no match” letters were common in prior administrations, but were discontinued by President Obama in 2009. The Trump Administration announced that they have resumed the practice, sending out over 500,000 such letters since March. Apparently, this was a result of the “Buy American, Hire American” Executive Order issued by Donald Trump earlier this year.

Implications of getting a No-Match Letter.

No-match letters are issued when the employee’s name and Social Security number provided by the employer conflict with SSA records. According to the agency, about 10% of the over 250 million records submitted contain non-matching numbers.

This frequently happens when an undocumented worker presents a fake card to their boss because they cannot obtain actual social security cards under our federal laws. When the employer dutifully submits the number to the government, the SSA notices the discrepancy and issues the letter. There can be other explanations for the no-match such as typographical errors or mistakes in the SSA database.

The law is a bit unclear as to what employers are required to do in response. SSA suggests the employer to talk with employees and attempt to resolve such discrepancies within 60 days. The SSA doesn’t require the employer to fire an employee whose number doesn’t match. However, the Department of Homeland Security (DHS) contends the employer has the obligation to do so within a “reasonable” time period of having constructive knowledge that the employee is unauthorized to work—which may result from getting a no-match letter.

Yet it’s a violation of state and federal laws to discriminate against an employee based on nationality and wrongful termination could result in liability.

In short, each situation is different and employers must proceed carefully should they receive such an SSA letter.

Hospitality, Agricultural and Construction Industries Targeted

Those businesses most affected make up a large part of our North Bay economy: hospitality (including restaurants and hotels); agriculture (including wineries and vineyard management); and construction. According to Sonoma County's website, agriculture, construction and tourism make up about 20% of the county's workforce and are major drivers of its economy.

These are sectors of our economy that rely heavily on undocumented labor. The United States has an estimated 7.8 million undocumented immigrants working or about 15% of the work force, according to the Pew Research Center. But immigrants make up approximately 33% of agricultural workers, 32% of the hospitality industry, and 25% of construction workers.

It is pretty clear that these sectors of the economy have received the largest number of the "No-Match letters". According to the New York Times, approximately 50 growers and ag businesses in the San Joaquin Valley have received these letters recently, affecting almost 25,000 workers. We don't know how many County businesses who received the no-match letters, but I have talked to many local business owners that did.

Will Social Security share info with ICE?

It remains to be seen whether the SSA will communicate to **ICE** the names of employers or employees in response to no-match letters. If so, this could result in audits of employers, the firing of many undocumented workers and potentially deportation proceedings against some of them.

Our country has long had a "Don't Ask, Don't Tell" attitude policy toward undocumented labor: the feds officially say it's against the law, but they've intentionally looked the other way, knowing that these industries would suffer severe consequences if these laws were strictly enforced due to labor shortages.

This may be changing now with the Trump Administration's broad and aggressive anti-immigrant agenda. "It's just another tactic to further marginalize and scare our immigrant communities and their employers," stated Congressman T.J. Cox (D.Fresno) in response to the SSA announcement.

In fact, the only sensible solution is comprehensive immigration reform that addresses both the labor shortage in this country and the large undocumented population here. At least for now, reform seems far away. We'll likely have to wait until at least 2021 for that, and maybe beyond.

Until then, employers should not be surprised if they get a letter in their mailbox from the Trump Administration.

Check latest immigration news and developments in **KPB Blog**

About the author:

CHRISTOPHER A. KEROSKY is a partner with Wilson Purves in the law firm of KEROSKY PURVES & BOGUE, with offices located in San Francisco, Santa Rosa, Ukiah, Napa, San Rafael, Walnut Creek, San Jose and Sacramento. Mr. Kerosky has been an attorney licensed to practice law in California for 25 years. He is a graduate of UC Berkeley (Boalt Hall) School of Law and a former trial lawyer for the

Civil Division of the U.S. Department of Justice in Washington D.C. For 9 years, he has been honored as one of Northern California's top lawyers by San Francisco Magazine, "Super Lawyers" edition. Mr. Kerosky speaks English, Spanish and Polish and has also working knowledge of Russian.

WARNING: The article above is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case.