

# MALDEF'S "NO-MATCH" FACT SHEET

OCTOBER 2007

The Mexican American Legal Defense and Educational Fund is a national organization dedicated to protecting and promoting the civil rights of Latinos living in the United States. In response to numerous inquiries regarding the state of so-called "No-Match" letters, MALDEF has prepared the following fact sheet for reference by both employers and employees. It is MALDEF's position that:

- No-match letters indicate only that an employee's identification documents do not match Social Security Administration (SSA) records and are intended to notify employers that there is a discrepancy between information contained in W-2 forms and information in SSA records.
- No-match letters are not reliable indicators of work authorization or immigration status; in fact, the letters are often the result of simple human error.
- No-match letters are not a basis in and of themselves to fire, suspend, lay off, discriminate or take any adverse action against employees whose names appear on the letters.

## *Changes to the Effect of No-Match Letters*

- Under longstanding federal regulations, employers were not required to take any action when they received a no-match letter from SSA: in fact any employer using the information in the letter as a pretext for taking adverse action against an employee may violate state or federal law.
- In August 2007, the Department of Homeland Security (DHS) published a final rule (77 Fed. Reg. 45611) under which DHS intended to impose liability on employers who failed to follow certain "safe harbor" procedures when they received no-match letters. The final rule is explained in a "guidance letter" DHS intended to include in no-match letters issued by SSA beginning in September 2007.
- On October 10, 2007, the court entered a preliminary injunction against DHS preventing it from implementing the final rule until a final decision after trial to determine whether the rule is legal.

## *Current State of Affairs*

An employer is not required to take any action against an employee when it receives a no-match letter. No-match letters are intended to help SSA maintain accurate records and properly credit employees' earnings: a mismatch between a name and a Social Security number does not necessarily mean an employee is using someone else's Social Security number or that a worker is an undocumented immigrant.

### **For Employers**

Whether you have received a no-match letter in the past or receive a no-match letter while the preliminary injunction is in effect, MALDEF strongly encourages you to withhold taking any adverse action against an employee solely on the basis of a no-match letter and to contact an attorney regarding no-match letters you receive.

### **For Employees**

If you believe your employer has taken any adverse action against you on the basis of a no-match letter, contact: MALDEF: [www.maldef.org](http://www.maldef.org)

Depending upon your circumstances, you may have an action against your employer for being fired for an immigration-related reason, for being subject to an unnecessary verification, or for being subject to retaliation.

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