

# **BARSAMIAN & MOODY**

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## **MEMORANDUM**

TO: All Employers

FROM: Barsamian & Moody

DATE: June 6, 2019

RE: Social Security Changes Course on Mismatch Letters

The Social Security Administration has just changed course on its approach to the mismatch letters they have been sending out this year. As we reported over two months ago, SSA began sending out mismatch letters which instructed employers to log on to SSA's Business Services Online site to obtain a report of the mismatched names and numbers, and gave employers 60 days to correct any errors.

In response to an inquiry from Congressman Jim Costa, SSA has now clarified that if employers choose to not obtain the mismatched names and numbers and correct errors, SSA will not take any negative action against the employer. A copy of the SSA letter to Rep. Costa is attached. This is in direct conflict with the mismatch letters themselves, but this new clarification is welcome. It also reaffirms the prohibition against SSA sharing the mismatch information with other federal agencies, and employers can hopefully rely upon SSA adhering to that prohibition.

This is not to say that there is there is no advantage in following through with the mismatch letter and checking the names and numbers for accuracy. If an employer is audited, by ICE for example, ICE is likely to ask if the ever obtained a mismatch letter, and the auditor is going to want to know what, if anything, the employer did in response to the mismatch letter. If the employer can say that they checked the names and numbers, corrected any errors, and otherwise followed up with the course of action we previously proscribed, the employer will be able to show that it has done all it can do to ensure that it has accurate information. Likewise, because a mismatched Social Security number, by itself, is not grounds to conclude a person is ineligible to work, using the online system does not create an argument that the employer was aware an employee was ineligible to work.

We will continue to keep you up to date as needed. If you have any questions, please do not hesitate to contact us.