



SOCIAL SECURITY GENDER NO-MATCH LETTERS AND TRANSGENDER EMPLOYEES

February 2011

Transgender workers sometimes have different gender markers in their employers' records than what the Social Security Administration (SSA) has in their database. When this occurs, SSA may send a notice stating that the employee's listed gender "does not match" the SSA's records. This information sheet explains what these "no-match" letters are and what to do if your employer receives a gender no-match letter about you.

WHAT ARE NO-MATCH LETTERS?

The SSA maintains information on everyone who has a Social Security number, including name, date of birth, and gender. Employers are required to submit employee information to the SSA when a new employee is hired which the SSA verifies against the information in their database. This is done to ensure that workers are using valid Social Security numbers and that people receive the Social Security benefits to which they are entitled.

When information an employer submits does not match the SSA database, a notification is sent to the employer specifying which particular data does not match. While the notification may be either a paper letter or electronic notification, both types are commonly referred to as "no-match letters" by transgender people. Occasionally, these letters are sent directly to the employee.

SSA has acknowledged that collecting and verifying gender data from employers is unnecessary for their programs. In fact, gender was never intended to be part of SSA's employee verification programs, and is currently only an optional category in some programs. SSA has eliminated the possibility of gender matching in some of its matching programs and NCTE is working with SSA to ultimately end this practice. In the meantime, transgender workers might consider the following:

EMPLOYERS ARE NOT REQUIRED TO TAKE ACTION ON A GENDER NO-MATCH

Sometimes employers are erroneously concerned that they could face penalties for not reporting gender or for not taking action about mismatches between their records and the SSA's. This isn't true. **Employers are NOT subject to any penalties or legal requirements when they receive a gender no-match notice.** In the case of a gender no-match, employers can choose to raise this matter with the employee, resubmit the employee data without gender, or **simply do nothing and ignore the notice.**

Employers are only required to take action to resolve a no-match when it involves an employee's name or Social Security number, and the employer has a reason to suspect identity or immigration fraud. However, we understand that some employers do not understand these rules and insist that the gender discrepancy be fixed by the employee.

WHAT TO DO IF YOU RECEIVE A NO-MATCH LETTER

There is no single, right answer for what to do if you are the focus of a gender no-match letter. You will need to consider your individual circumstances and decide what is best for you.

If your employer receives any no-match letter – including for gender – regarding you, SSA instructs them to first check to make sure they submitted the data correctly, without typographical errors. If that does not fix the mismatch, the employer might notify you about the mismatch and ask you to resolve it.

You can address the mismatch in a few ways:

If you can, consider changing your gender marker with SSA:

This currently requires providing proof of “sex reassignment surgery” to SSA. Our website has detailed information about the process of updating Social Security records as well as more information on current SSA policy for changing gender markers. NCTE is actively advocating with SSA to remove this surgery requirement.

If you update your gender marker with SSA, there is no need to reveal your transgender status to your employer. Once your SSA gender marker is updated, tell your employer that you have resolved the discrepancy with SSA.

If you cannot change your gender marker with SSA, consider your other options:

- If you are unable to update your gender marker with SSA, then you may want to tell your employer that you are transgender (if you are not already out to them). If you do tell your employer, first request assurances that the health information you are about to share will be kept confidential and shared with only those who need to know in order to resolve this problem. Ideally, it should be kept within the Human Resources department, if you have one, or with the person who handles employee records.
- When you talk with your employer or HR department, you can ask your employer to resubmit your data without gender. Gender is optional data for SSA number verification, and **employers can choose not to submit it**. Employers are not obligated to honor your request, but it is worth asking for if you are out at work.. You can also suggest to your employer that they stop submitting gender data for all employees. Though this will not address your immediate situation, it will help you, your employer, and other employees avoid future gender no-match hassles.
- NCTE has a letter on our website from SSA explaining that gender data is optional, and should not be a basis for any adverse action against an employee. The letter recommends that employers not submit gender data to avoid any problems. Providing a copy of this letter may help convince an employer to drop any concerns related to a no-match letter. However, because it is addressed to NCTE, using this letter may mean coming out to your employer as transgender. [letter can be found at http://transequality.org/PDFs/SSA_Letter_SSNVS_11_16_10.pdf]

- One option that may be undesirable for many transgender people—but a viable alternative for some—is to change your employee records so they match the SSA database, even if it's not the right gender for you. Be careful—this option may affect your gender marker with company-provided medical insurance or in other ways that you do not want; it could also disclose your transgender status to a large number of your co-workers. Discuss with your employer what possible additional effects may result and find ways to minimize the negative impact of this.

TALKING WITH EMPLOYERS REGARDING YOUR GENDER NO-MATCH LETTER

Employers are frequently uncertain how to respond to a gender no-match letter. Your attitude can set the tone for the conversation. Be polite and matter-of-fact.

Keep in mind that most information about your transgender status is a private medical matter. Except for a very few jobs, you are under no obligation to provide your employer with information about your surgery status or whether you take hormones. If your employer asks you to change your gender marker with SSA and you have not had surgery, you can say that SSA has specific medical requirements that you are unable to meet. If you are pressed for your personal medical history, we suggest saying that your medical care is private information between you and your doctor.

NAME CHANGES AND NO-MATCH LETTERS

No-match letters can also be issued if the name your employer has on file for you does not match SSA records. If you receive a name no-match, you must resolve the discrepancy.

If you have legally changed your name:

If you have legally changed your name, update your SSA or employer records (whichever record does not have your current information).

If you use a different name at work than your legal name:

If you use a different name at work than your legal name, you can:

- Obtain a court-ordered legal name change. How to do this, and the length of time to do it, varies state by state. In some states it can be done as quickly as a day or two, while in other states it can take up to six months. Once you have your court-ordered name change, make sure that both SSA and your employer have your new name. (See our webpage on updating Social Security records.)

Note: Common-law name changes (legally changing your name through demonstrated long-term use) used to be a viable way to legally change one's name. But since common-law name changes can take years to establish and are not accepted by a growing number of government agencies, common-law name changes are often not the most practical method for legally changing names. Continue using your preferred name for everyday workplace conversations, but make sure your employer uses your legal name for wage-reporting and other government communications.

IMMIGRATION ISSUES AND NO-MATCH LETTERS

If you receive a no-match letter connected to your work authorization status, NCTE recommends contacting Immigration Equality (www.immigrationequality.org), the National Center for Lesbian Rights (www.nclrights.org) or the National Immigration Law Center (www.nilc.org) for assistance. We suggest that you do so as soon as you are aware that there is a problem.

HELP NCTE TRACK NO-MATCH LETTERS

If you receive a gender no-match letter, please contact NCTE and let us know what happened in your circumstances. If you can, please send us a copy of the no-match letter. We are tracking no-match letter occurrences and outcomes so that we can better affect public policy. Note: if you send us a no-match letter, you can remove your personal information or let us take care of that. We will ensure that your privacy is respected.

Other Resources

For more information, consult these additional resources:

NCTE's SSA information: www.nctequality.org/Issues/Federal_Documents.html

Social Security Administration: www.ssa.gov, 800-772-1213

Immigration Equality: www.immigrationequality.org, 212-714-2904

National Center for Lesbian Rights: www.nclrights.org, 415-392-6257

National Immigration Law Center: www.nilc.org, 213-639-3900

Transgender Law Center: www.transgenderlawcenter.org, 415-865-0176