

SOCIAL SECURITY GENDER NO-MATCH LETTERS AND TRANSGENDER EMPLOYEES

INFORMATION FOR EMPLOYEES

A Resource from the National Center for Transgender Equality

January 2008



Transgender workers sometimes have different gender markers in employer records than what the Social Security Administration (SSA) has in their database. When this occurs, those transgender employees can be the focus of no-match letters from SSA. This information sheet explains what 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 keeps information on everyone who has a social security number, including name, date of birth, and **gender**, among other data. Employers submit employee information to SSA, at hiring and at other times, which 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 employer-submitted information does not match the SSA database, 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.” When employers have a gender marker listed in employee records which differs from the SSA database, a no-match letter indicating the gender mismatch may be sent to the employer, or sometimes directly to the employee.

WHAT TO DO IF YOU RECEIVE A NO-MATCH LETTER

There is no one single, right answer for what to do if you are the focus of a gender no-match letter. Your individual circumstances will guide you to choose what is best for you.

If your employer receives a gender no-match letter regarding you, SSA instructs them to first check to make sure they submitted correct data without typographical errors. If that does not fix the mismatch, the employer should notify you about the mismatch and the responsibility to resolve the issue becomes yours. You can address the mismatch in a few ways:



IF YOU CAN, CHANGE YOUR GENDER MARKER WITH SSA

This requires providing proof of “sex reassignment surgery” to SSA. 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 the discrepancy has been resolved. (See our webpage on updating Social Security records for more information on SSA policy for changing gender markers.)

IF YOU CANNOT CHANGE YOUR GENDER MARKER WITH SSA, CONSIDER YOUR OPTIONS

- If you are unable to update your gender marker with SSA, then a coming-out conversation with your employer may be unavoidable (if you are not already out to them). If it becomes apparent you must out yourself, first request assurances that the health information you are about to share will be kept confidential and restricted to the fewest necessary people, and kept within the Human Resources department, if possible.
- 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. Employers are not obligated to honor your request, but it is worth talking to them about it. Since gender data is optional, you can also suggest to your employer that they stop submitting gender data for all employees. This will not address your immediate situation, but will help you, your employer, and other employees avoid future gender no-match hassles. See our Information for Employers – Social Security Administration No-Match Letters. [Publication expected January 2008.]
- 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 gender you live by. Be careful—this option may affect your gender marker with company-provided medical insurance or in other ways that you do not want; it may 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 or eliminate any harm.

In some circumstances, notification is sent to the employer only after a failed attempt to mail the worker directly. By making sure that your employer and SSA have your current address, you can lessen the chances that your employer will receive a no-match letter about you.

TALKING WITH EMPLOYERS REGARDING YOUR GENDER NO-MATCH LETTER

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

Keep in mind that much about your transgender status is a private medical matter. Except for very few jobs, you are under no obligation to provide your employer with information about your surgery status or hormone use (or lack thereof). If your employer asks you to change your gender marker with SSA and you have not had surgery, simply say that SSA has specific medical requirements that you are unable to meet. If you are pressed for your personal medical history, you can respond by saying that your medical care is private information, between you and your doctor.

HOW THE DEPARTMENT OF HOMELAND SECURITY AFFECTS NO-MATCH LETTERS

In August 2007, the Department of Homeland Security (DHS) issued new enforcement rules¹ that would have required employers to resolve SSA no-matches within 90 days. If the employer could not resolve the no-match within that time, the rules specified that the employer would have to fire the employee or face substantial fines. Those rules have now been withdrawn and a new version is expected in early 2008. DHS hopes to substantially increase the number of employers participating in Social Security verification programs within the next few years.

SSA policies on their own are vague about any repercussions of data no-matches. Future DHS enforcement rules may significantly affect the necessity of resolving mismatches within a given time period.

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 GO BY A DIFFERENT NAME AT WORK THAN YOUR LEGAL NAME

If you go by 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, 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.

This option may affect your name with company-provided medical insurance or in other ways that you do not want. It may 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 or eliminate any harm.

¹8 CFR Part 274a, "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter"

IMMIGRATION ISSUES AND NO-MATCH LETTERS

If you receive a no-match letter connected to your work authorization status, NCTE recommends you contact Immigration Equality (www.immigrationequality.org), National Center for Lesbian Rights (www.nclrights.org) or National Immigration Law Center (www.nilc.org) for assistance.

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, send us a copy of the no-match letter. We are tracking no-match letter occurrences and outcomes so we can better affect public policy. Note: if you send us a no-match letter, we will ensure that personal information is removed.

ADDITIONAL 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

Immigration Equality: www.immigrationequality.org

National Center for Lesbian Rights: www.nclrights.org

National Immigration Law Center: www.nilc.org

Transgender Law Center: www.transgenderlawcenter.org



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