# NINTH CIRCUIT RULES ON EMPLOYER RESPONSE TO NO-MATCH LETTERS

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The U.S. Court of Appeals for the Ninth Circuit recently upheld an arbitrator's ruling that Aramark Facility Services wrongfully terminated 33 janitors for failing to correct Social Security discrepancies contained in a no-match letter within 3 working days. In the case of *Aramark Facility Services vs. SEIU Local 1877,* the issue before the Court was whether a no-match letter from the Social Security Administration puts an employer "on constructive notice that it was employing undocumented workers" in violation of immigration laws. Employers across the country routinely encounter this issue, and with the recent high-profile and volatile immigration raids on businesses across the country, employers find themselves between a rock and a hard place in responding to no-match letters from the SSA while still remaining in compliance with immigration laws since the Immigration Reform and Control Act (IRCA) subjects employers to civil and criminal liability if they employ undocumented workers "knowing" of their undocumented status.

In the case before the court, Aramark received a no-match letter indicating that 48 workers had provided incorrect social security numbers. The Company provided the workers 3 working days to go to the Social Security Administration and correct the discrepancies and provide proof to the Company of a new social security card or verification that a new card was being processed. Thirty-three employees did not correct the discrepancy in time and were fired within 7-8 days after Aramark's letter. The union representing the fired employees filed a grievance and the arbitrator determined that Aramark had no "just cause" to terminate the employees since the no-match letter was insufficient to give Aramark constructive notice of immigration violations.

On appeal, the Ninth Circuit agreed with the arbitrator and determined that a *SSA no-match letter is not evidence of a violation of immigration laws and simply indicates to workers that their earnings are not being properly credited for Social Security purposes*. The Court concluded that a no-match letter did not give Aramark constructive notice that it or its employees were in violation of immigration laws because a discrepancy with the SSA "does not automatically mean that an employee is undocumented or lacks proper work authorization." Much of the evidence before the Court related to the inaccuracies and discrepancies within the Social Security system and the inability to rely on such evidence.

The *Aramark* decision underscores the care with which employers should treat no-match letters as well as the disdain the courts hold for such letters as evidence of violations of immigration laws. ***Clearly, employers should act carefully before taking any adverse action against their workers over immigration issues especially if such action is based upon receipt of a no-match letter since, according to the courts, this by itself, does not give an employer constructive knowledge that their workers are unauthorized to work and are subject to termination.*** ⚖

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