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## MEMORANDUM

TO: All Employers  
FROM: Barsamian & Moody  
DATE: April 20, 2023  
RE: **IRS ACA MISMATCH NOTICE & COMPLIANCE**

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If you are an employer with 50 or more full-time employees, you are likely aware of the annual ACA filing of IRS Forms 1094-C and 1095-C and the resulting IRS notices regarding TIN/SSN mismatches. This Memorandum outlines the steps employers should take in response to these notices and how to avoid penalties. Please note that this Memorandum does not discuss how to correct your forms.

IRS offers “reasonable cause” relief when employers can establish that they acted in a reasonable manner both before and after the mismatch notice, in order to avoid penalties. Like most employers, if you e-filed your ACA information with the IRS, you received one of the six responses, including (i) Accepted, (ii) Accepted with Errors, (iii) Partially-Accepted, (iv) Not Found and (v) Rejected. We will discuss the steps you should take if your filing is not entirely accepted.

First and foremost, check to see if the information you submitted on your form(s) matches the information in your records to make sure there are no clerical errors. If your information matches, IRS [instructs](#) that you ask the employee to confirm that you have their correct number and if not, to provide the correct number to you. The request can be verbal or in writing. We recommend you make any such solicitations in writing so you can show the IRS that you acted in a reasonable manner.

1. After you receive the mismatch notice, hand-deliver or mail the employee(s) a letter stating that IRS has indicated that their name and SSN listed in the company’s payroll records does not match with the IRS and they must verify the information with the company. Provide the employee(s) “reasonable time” to correct or verify SSN. A sample letter is attached.
2. If the employee(s) does not respond within a reasonable time, send a second letter (“Second Notice”).
3. If the employee(s) still fails to respond or correct the TINs, send a third letter (“Third Notice”) by December 31 of the year following the initial solicitation.

Please keep a copy of all letters sent to the employee(s). According to the IRS, if you follow these steps, you have demonstrated that you have taken reasonable steps to obtain the correct SSN and may escape penalty. IRS may provide further guidance on this issue.

**NOTE:** If you were notified of a TIN mismatch in the previous ACA filing in 2022, according to the IRS, you did not act reasonably if your ACA filing in 2023 was based on the same TIN as 2022. You would however have acted reasonably if your 2023 ACA filing was made using a newly provided or corrected TIN from the employee.

Keep in mind that the mere fact that IRS has said there is a mismatch does not mean that you should, or even that you are legally entitled to, take any action against the employee. Employers should not assume that a mismatch conveys any information regarding the employee's immigration status or actual work authority. There are many reasons an employer may receive mismatch notice, including but not limited to: (1) an unreported name change due to marriage, divorce, or naturalization; (2) input errors by the IRS staff; (3) reporting errors by an employer or employee; (4) identity theft; (5) errors in reporting proper hyphenated or multiple surnames; and/or (6) fraud.

However, if the employee admits that he or she is not authorized to work in the United States, this is "actual knowledge" and you should contact your labor attorney. You cannot continue to employ somebody who you know is not authorized to work in the US. If the employee tells you that the Social Security Number he or she used does not belong to them, you cannot continue to make IRS filings knowing that the Social Security Number is incorrect.

The guidance on this topic is subject to change, so please do not hesitate to contact us to address any particular situations you may face. If you have any other questions or comments, please do not hesitate to contact us.