

Recently a large employer was raided by agents of the USCIS (United States Citizenship & Immigration Services) which resulted in the capture of over 1,000 illegal aliens employed by the company and the arrest of some of the company's officers. The company is now facing serious legal action for knowingly employing people not legally eligible to work in the US.

As you know, the 1986 Immigration Reform and Control Act (IRCA) created the requirement that all US employers verify through a specific process the identity and work authorization or eligibility of all individuals, whether US Citizens or not, hired after 11/6/86. Employers must complete employment Eligibility Verifications Forms I-9 and the new employee must submit a document or combination of documents of his choice, approved by IRCA, to verify his identity and work eligibility.

One of the documents often used as proof of work eligibility is the Social Security Card. However, these SS cards may be forgeries or copies. Periodically, the Social Security Administration sends out reports to employers when they have received payroll information on employees whose name does not match the SS number on record with the SSA. The mismatch may simply be the result of a typographical error in reporting the number or misspelling the name. It is the responsibility of the employer to research the error and respond to the SSA. (See the attached procedure).

If your research discovers that the employee is using a forged or copied number, you must take an action. According to the USCIS¹:

“An employer who discovers that an employee has been working without authorization should re-verify work authorization by allowing such an employee another opportunity to present acceptable documentation and complete a new I-9. However, employers should be aware that if it knows or should have known that an employee is unauthorized to work in the United States, they may be subject to serious penalties for *knowingly* continuing to employ an unauthorized worker.”

On the other hand, IRCA also “prohibits employers with 4 or more employees from discriminating against any person (**other than an unauthorized alien**) in hiring, discharging, or recruiting or referring for a fee because of a person's national origin or, in the case of a citizen or protected individual, citizenship status. Also, the I-9 process may not be used to pre-screen employees for hiring.”²

With the issue of employing immigrants who are in the country illegally becoming more of a media issue, you can expect heightened enforcement. You can obtain more information of your obligations under IRCA at www.uscis.gov.

¹ www.uscis.gov

² www.uscis.gov

WHAT TO DO IF A SSN FAILS TO VERIFY

Follow these steps for each SSN that failed verification:

- ❑ Compare the failed SSN to your employment records. If you made a typographical error, correct the error and resend the file.
- ❑ If your employment records match your submission, ask your employee to check his/her Social Security card and inform you of any name or SSN difference between your records and his/her card. If your employment records are incorrect, correct your records and resubmit the corrected data.
- ❑ If your employment records and the name and SSN shown on the Social Security card match, ask the employee to check with any local Social Security Office to determine and resolve the issue. Tell the employee that once he/she has visited the Social Security Office, he/she should inform you of any changes. You should correct your records accordingly.
- ❑ If the employee is unable to provide a valid SSN, you are encouraged to document your efforts to obtain the corrected information. (Documentation should be retained consistent with the payroll records for a period of three years.)
- ❑ If the employee no longer works for you, try to obtain the corrected information from the employee and submit it to SSA on Form W-2c (Corrected Wage and Tax Statement).
- ❑ If you are unable to contact the employee, you are encouraged to document your efforts.

If you have already sent a Form W-2 with an incorrect name and/or SSN, then submit a Form W-2c (Corrected Wage and Tax Statement) to correct the mismatch.

Remember

- A mismatch is not a basis, in and of itself, for you to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating.
- Company policy should be applied consistently to all workers.
- Any employer that uses the failure of the information to match SSA records to take inappropriate adverse action against a worker may violate State or Federal law.
- The information you receive from SSNVS does not make any statement regarding a worker's immigration status.

SOURCE: www.ssa.gov/employer/ssnvs_handbk.htm#SSNresults

This article was prepared by Scott Latham with Latham Management Services. Latham has over thirty years experience in the human resource arena along with nearly thirty years of experience in the graphic arts industry.

He can be contacted at (972) 307-1843 or by email at sklatham@aol.com.