



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration Related
Unfair Employment Practices - NYA
950 Pennsylvania Avenue, NW
Washington, DC 20530*

November 19, 2009

VIA First Class Mail and E-Mail (Anderson@millercaanfield.com)

Robert Anderson, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
101 North Main, 7th Floor
Ann Arbor, MI 48104

Dear Mr. Anderson:

Thank you for your e-mail inquiry of August 24, 2009. In your e-mail, you state that your client submitted an employee's information to E-Verify and received confirmation of employment eligibility for that employee. The employee is currently receiving worker's compensation. The worker's compensation carrier concluded that the employee presented false documents and informed your client. You ask how your client can verify its employees' Social Security numbers. Additionally, you ask whether OSC would advise your client to conduct its own investigation.

Please note that the Office of Special Counsel (OSC) cannot provide an advisory opinion on any particular instance of alleged discrimination or on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding employer compliance with the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which OSC enforces. The anti-discrimination provision prohibits hiring, firing, recruitment or referral for a fee, and unfair documentary practices during the employment eligibility verification (Form I-9) process (document abuse) on the basis of citizenship or immigration status or national origin. It also prohibits retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision.

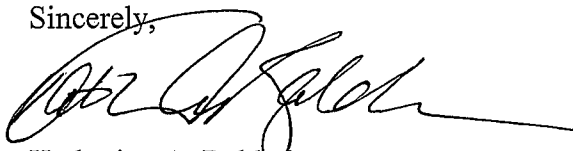
Regarding how your client can verify its employees' Social Security numbers, please note that E-Verify, the electronic employment eligibility verification system administered by the Department of Homeland Security (DHS) that is currently used by your client for employment eligibility verification purposes, compares an employee's information with records contained in the Social Security Administration's database.¹ E-Verify User Manual for Employers at 14 (Rev. March 2009).

¹ Please note, however, that E-Verify may only be used in connection with the Form I-9 employment eligibility verification process, and that it may not be used to verify the employment eligibility of existing employees unless the employer has a government contract containing an E-Verify clause. See, E-Verify Supplement for Federal Contractors at 7 (October 21, 2009)

Regarding your second question, an employer may choose to conduct an internal audit of its I-9 forms as long as it is conducted for every employee in the same manner. Consistent with the anti-discrimination provision of the INA, the employer may not treat employees differently during an audit because they look or sound foreign or possess a certain citizenship status. 8 U.S.C. § 1324b(a)(1) and (6). Selective audits, wherein an employer reviews only certain employees' previously completed I-9 forms, are therefore suspect. Further, during audits employers may not scrutinize more closely the I-9 forms and documentation of select employees on the basis of national origin or citizenship status; employers are required to treat all employees in the same manner. *Id.*

I hope that this information is helpful. Should you have any further questions, please contact OSC's employer hotline at (800) 255-7688.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine A. Baldwin', with a long horizontal flourish extending to the right.

Katherine A. Baldwin
Deputy Special Counsel