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COMING SOON TO YOUR DESK: BAD SOCIAL SECURITY NUMBERS

What happens when an incorrect Social Security number is on an employee's W-2 form? Maybe it's an honest mistake, or maybe the employee isn't authorized to work in the United States. Your human resources department probably will be seeing many more cases like this because of a new government policy.

The federal government has announced that it will send "Social Security no-match" letters to more than 75,000 employers this summer—a huge increase over past years. This has prompted concern in the business community and led many employers to ask, "How should I respond if I receive one of these letters?"

Regulatory Background

At the beginning of every year, your company must send the Social Security Administration (SSA) a copy of IRS Form W-2 for all employees who worked for you in the previous year. The SSA matches that information against its database so it can post earnings credits to each employee's account.

In many cases, W-2 forms have incorrect Social Security numbers. Sometimes the worker's name doesn't match the name of the person to whom the Social Security number was assigned. And sometimes the number on the W-2 form has never been assigned to anyone. Under the Internal Revenue Code, your company may be fined \$50 each time you submit an incorrect Social Security number on a W-2 wage report.

Until now, however, the SSA wouldn't notify you if you had only a small number of W-2 forms with incorrect Social Security numbers. It has been the SSA's policy in the past to send a "no-match" letter to an employer only if there were mismatches on at least 10 percent of its W-2 forms. No-match letters typically list the incorrect Social Security numbers and give instructions on how the employer can correct the reported information.

The SSA recently announced an important policy change. Beginning with year 2002 W-2 reports, it plans to send no-match letters to *all employers* whose W-2 data contains *any* mismatches. That will greatly increase the number of employers that receive these notifications. You will receive a no-match letter if you send the SSA even one W-2 form with a bad Social Security number.

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Employer's Response

So what should you do if your company receives a no-match letter from the SSA? The letter triggers your company's obligation to investigate the situation and send corrected data to the SSA. You must also ensure that your corrective actions comply with the range of laws protecting workers from employment discrimination.

Don't jump to the conclusion that the employees listed in the SSA's letter lack the authorization to work in this country. You must give the employee an opportunity to present correct information and/or documents that resolve the discrepancy. If the new information contradicts the facts or documents provided by an employee on Form I-9 at the time of hire, you are obligated to correct or reverify that information.

Your investigation may reveal that the employee isn't legally authorized to work in the United States. In that case, your company must not continue to employ him.

Bottom Line

You must exercise caution in handling these issues, and you're strongly encouraged to seek competent legal counsel when addressing such situations. A small investment in advice may avoid an expensive lawsuit.

HOW FAR DO YOU STRETCH THE DEFINITION OF EMPLOYEE?

A former manager for a health spa sued for sexual harassment in the workplace. However, the court was unable to show that the business employed enough workers to be subject to Title VII of the 1964 Civil Rights Act. You see, the "health spa" portion of the business actually was a house of prostitution, which, not surprisingly, did not keep accurate personnel or payroll records. (*Stinnett v. Iron Works Gym/Executive Health Spa Inc.*, 7th Cir. No. 01-2876, 8/26/02.)

As noted by the court, the former manager was "[p]osed with the rather difficult problem of proving the number of employees in a business that has much to hide." Affirming summary judgment for Iron Works Gym/Executive Health Spa Inc., the court found that the plaintiff's evidence indicating that the employer had up to 25 "spa attendants" in years preceding and subsequent to the time he worked there was insufficient to support his claim.

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UPCOMING JONES WALKER SEMINARS

Please note that our attorneys are involved in presentations in the following seminars. If you wish to attend, please contact one of our attorneys:

“Investigation of Misconduct and Disciplinary Actions,” September 17, 2002, in Baton Rouge, LA, Lorman Education Services

“Managing Your Louisiana Workforce in 2002,” September 23, 2002, in Shreveport, LA; September 25, 2002, in Baton Rouge, LA; and September 26, 2002, in New Orleans, LA, M. Lee Smith Publishers, L.L.C.

“Employment Law for Human Resource Professionals,” October 7-11, 2002, in New Orleans, LA, Council on Education in Management

“Investigation of Misconduct and Disciplinary Actions,” October 17, 2002, in New Orleans, LA, Lorman Education Services

“Certification in Human Resources Management,” November 4-8, 2002, in New Orleans, LA, Council on Education in Management

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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