

Protected Individual

Thank you for your inquiry. Companies erroneously think they are required by law to obtain a Social Security number from an applicant or current worker under the mistaken belief that unless the applicant or worker has an SSN, the company would be in violation of Internal Revenue Regulations and subject to numerous penalties. The applicant or worker is notified that, unless he obtains or discloses an SSN, he will not be hired or terminated for failure to disclose the information.

The IRC and regulations do not contain an absolute requirement that a business **MUST** provide one's SSN to the IRS.

IRC §6109(a)(3) provides:

Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

The IRS regulations interpreting §6109 provide:

If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating.

This law was used in the case of EEOC v. ISC (who terminated Mr. Hansen for not having a Social Security Number). The company believed the IRS's statement over the telephone, who incorrectly told the company that they could not employ an individual who did not have an SSN.

The case was settled out of court when the government used 26 CFR §301.6109-1(c) to show the company its remedy at law to protect the rights of the worker, and showed conclusively that American citizens are not required to have an SSN to live and work in the United States of America.

The law still places a duty on the company to request a taxpayer identifying number from the applicant/worker, but only if the applicant/worker is a foreign person. If any return, statement, or other document must be furnished to the IRS and the company has been unable to obtain an identifying number after requesting one, then the company needs only to include on the transmittal document forwarding such returns, statements, or other documents an affidavit stating that a request for the number was made.

Under §301.6109-1(c), a payer is required to request the identifying number of the payee, if the payee is a foreign person. If after such a request has been made the payee does not furnish the payer with his identifying number, no penalty will be assessed against the payer, pursuant to 26 CFR §301.6724-1(a)(1):

(a) *Waiver of the penalty*—(1) *General rule*. The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

Therefore, both the code and regulations mandate a payer (company) only to request the identifying number of the (foreign person) applicant or worker. If after such a request has been made the payee (applicant or worker) does not furnish the payer (company) with his identifying number, no penalty will be assessed against the payer (company), upon the filing of an affidavit with the IRS stating that the request was made.

From the Consent Decree of the case EEOC. vs. ISC, dated November 4, 1992 (p-4):

8. The defendant, Information Systems Consulting, A Division of Diversified Human Resources Group, shall be permanently enjoined from terminating an employee or refusing to hire an individual for failure to provide a social security number because of religious beliefs. If an employee or applicant for employment advises the defendant that he does not have a social security number because of his religious beliefs, the defendant shall request, pursuant to Section 6724 of the Internal Revenue Service Code, 26 U.S.C. 6724, a waiver of any penalties that may be imposed for failing to include an employee social security number on forms and documents submitted to the IRS.

Also:

8 USC §1324b. Unfair immigration-related employment practices.

(a) Prohibition of discrimination based on national origin or citizenship status.

(1) General rule:

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in §1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) Because of such individual's national origin, or

(B) In the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

...

(3) "Protected Individual" defined

As used in paragraph (1), the term "protected individual means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under §1160(a) ...

Pursuant to 31 CFR § 215.11 public employees, members of the Armed Forces and nonresident alien employees are subject to withholding. They are required by 31 CFR § 215.9 to submit a Form W-4. No law requires a 'Protected Individual' (American citizen or American national) [8 USC §1324b(a)(3)(A)] to complete a Form W-4 nor be required to obtain/furnish an SSN [42 USC 405(c)(2)(B)(i)] as a condition to seek, obtain or keep labor or contracts with non-public entities.
