



SSN Mistake Leads To Million Dollar Verdict

HOW CAN YOU AVOID A SIMILAR FATE?

Insights

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A federal court in California recently ruled that a job applicant's admission that he used a false Social Security Number (SSN) cannot be the basis for disqualifying him from employment on good moral character grounds. The court awarded the plaintiff over \$1 million as a result of the employer's misstep, which should serve as a wake-up call to all employers when it comes to handling SSN issues.

Employer: "Former False SSN = Lack Of Integrity"

Years ago, Victor Guerrero entered the United States as a child from Mexico. As a teenager, he used a false SSN to seek employment. Guerrero eventually became a lawful permanent resident and then a naturalized U.S. citizen. By legalizing his immigration status, he was able to obtain a valid SSN.

In 2011, Guerrero submitted an employment application to become a corrections officer with the California Department of Corrections and Rehabilitation (CDCR). He passed the written and physical exams and met all of the other job qualifications.

But during his interview and routine background check, Guerrero admitted to previously using a false SSN to seek employment. The CDCR denied his employment application and sent him a rejection letter stating that his past usage of a false SSN showed that he was "not suitable to assume the duties and responsibilities of a peace officer." The letter also stated that using the SSN showed a "willful disregard of the law" and a "lack of honesty, integrity, and good judgment."

Guerrero filed a lawsuit against the CDCR in the U.S. District Court for the Northern District of California, seeking damages based on a violation of Title VII of the Civil Rights Act of 1964. He argued that as a Latino job applicant, he was subjected to national origin discrimination because the job application process required him to disclose that he had used a false SSN in the past.

Court: "Policy As Applied Is Discriminatory"

The court held that while California law required the CDCR to conduct a background investigation to ensure good moral character, the "good moral character" hiring policy had a significant disparate impact on Latino applicants like Guerrero, even though it was facially neutral. In light of that, the CDCR had a duty to apply the relevant EEOC factors – which it failed to do – resulting in the court

holding in favor of Guerrero on the Title VII disparate impact claim. The court ruled in his favor and awarded \$1,186,307 in attorneys' fees, \$145,972 in expenses, and \$140,362 in back pay.

Issue Has Become More Common

As an increasing number of formerly undocumented individuals obtain the legal authorization to work in the U.S, addressing false SSN issues has become a more frequent occurrence facing employers. In 2012, it was estimated that more than 600,000 undocumented individuals were issued temporary employment authorization cards under President Obama's Deferred Action for Childhood Arrivals (DACA) program.

Armed with valid authorization for employment, an individual is eligible to seek a valid SSN from the Social Security Administration. Once an individual has a valid SSN, a current employee, who may have presented a false SSN when originally hired, may now come forward with a new SSN and seek to update relevant employment records.

Employers, especially those in California, need to tread very carefully when presented with evidence of a new SSN and information that the employee originally presented a fake SSN. In addition to this recent ruling, the state has enacted laws that prohibit adverse treatment of an employee who comes forward with a new and valid SSN.

Employers who consider past immigration status and associated illegal activity attributed to that status, such as using a false SSN to seek employment, may find that their actions are challenged as unlawful discrimination. As Guerrero's attorney, Marsha Chien, said in a statement: "If discrimination like this is allowed to stand, millions of hard working people who are legally allowed to work in the U.S. will be left without the means to support themselves and contribute to our economy."

What Should You Do?

You need to be aware of the interplay between employment discrimination laws and federal and state immigration laws, in particular when it comes to ensuring that employees are lawfully permitted to work in the United States. If you learn of a possible SSN discrepancy or mismatch, either through a letter from the Social Security Administration (SSA), a third party (such as an individual or a governmental agency), or from the employee directly, you should take certain steps to ensure accuracy in your own records and that correct information is communicated to the SSA.

The first step should be to check internal records to ensure that the correct SSN is listed in the employee's files. Taking prompt steps to correct errors or to address the situation will show good faith on your part and diminish any indication that you had constructive knowledge that an employee was working without legal authorization. You should never ignore information relating to discrepancies between an employee's name and SSN.

If you receive a mismatch or SSN verification letter from the SSA, you should check your internal records, communicate the information to the employee in question, correct your records if there

records, communicate the information to the employee in question, correct your records (if there was an error), respond to the SSA as indicated on its letter, and insert any notes of explanation, as warranted, in the employee's personnel file.

Depending on the credibility of the information received alerting you to the possibility of a false SSN, you may need to take additional steps, up to and including termination of the worker's employment. However, you should seek legal guidance before making any decisions based on an allegation of using a false SSN.

You are encouraged to adopt a written immigration compliance policy and to train all relevant personnel on the importance of adhering to it. You should avoid "citizen only" or "permanent resident only" hiring policies, unless you are required to do so by federal law or based on a federal contract. In most cases, it is unlawful to require job applicants to have a particular immigration status.

Finally, you should follow the fundamental rule of workplace law: be consistent with all employees and new hires. Following the appropriate I-9 practices will help you minimize the risk of discrimination charges and exposure for failing to comply with Form I-9 regulations.

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