

Guidance on Discrimination During Employment Verification

New Justice Department guidance clarifies when the agency may find reasonable cause to find that an employer illegally discriminated against a worker during the employment verification process.

Employers are under increasing pressure by immigration authorities to ensure their workers are legal. But companies are prohibited by law from treating workers differently or otherwise discriminating against them because of their national origin.

The Justice guidance states that upon receiving an allegation of discrimination from a worker, the agency first will look to determine whether the complainant is an authorized worker. Once the worker's eligibility is confirmed, the agency will then investigate whether the employer engaged in unlawful discrimination.

The Department of Justice's Office of Special Counsel (OSC) warns that an employer who receives a no-match letter from the Social Security Administration and terminates employees without attempting to resolve the mismatches, or who treats employees differently "or otherwise acts with the purpose or intent to discriminate based upon national origin or other prohibited characteristics," may be charged with discrimination.

OSC will not find reasonable cause to believe the employer acted unlawfully by terminating a worker whose name and SSN don't match if:

1. An employer followed all of the safe harbor procedures outlined in the Department of Homeland Security's no-match rule and;
2. If all employees with name-number mismatches were treated the same.

What This Means For Counties

Counties may want to look closely at their employment verification procedures to ensure no probable cause for discrimination can be found. CTSI's loss prevention department may be able to provide some guidance. Also, counties may get additional guidance on the Justice Department's discrimination policy from the OSC website at OSC.gov.

For more information, contact CTSI at 303-861-0507.