



U.S. Department of Justice

Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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September 30, 2013

BY EMAIL (sweiss@musicroadhotel.com)

Sande Weiss
Music Road Hotel
303 Henderson Chapel Road
Pigeon Forge, TN 37863

Dear Sande Weiss:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to your email to OSC, dated July 31, 2013. We sincerely apologize for the delay in our response. In your email, you ask whether your company may use socialsecurity.gov and E-Verify after a job offer is made to a job applicant but prior to putting the employee on the schedule "to make sure all employees match their SSN." In addition, you asked whether "if E-Verify says there is something wrong with the birthdate," you can require "the employee to resolve the issue, prior to a working schedule."

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits citizenship or immigration status discrimination, national origin discrimination, unfair documentary practices ("document abuse") during the employment eligibility verification (Form I-9 and E-Verify) processes, and retaliation for filing a charge or asserting rights under the anti-discrimination provision. More information on OSC can be found on our website: www.justice.gov/crt/about/osc. Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are able to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA, 8 U.S.C. § 1324b.

E-Verify is an internet-based system that compares information from an employee's Form I-9 to data from U.S. Department of Homeland Security ("DHS") and Social Security Administration ("SSA") records to verify the identity and employment eligibility of each newly hired employee. U.S. Citizenship and Immigration Services ("USCIS"), *E-Verify User Manual for Employers, M-775 (Sep. 2013)*, available at http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf, p. 4 ("E-Verify User Manual"). According to the memorandum of understanding ("MOU") that an employer using E-Verify must sign an E-Verify query can only be run after an employee completes the Form I-9. E-Verify MOU, Art. I, available at [www.uscis.gov/USCIS/E-Verify/Customer_Support/Employer_MOU_\(September_2009\).pdf](http://www.uscis.gov/USCIS/E-Verify/Customer_Support/Employer_MOU_(September_2009).pdf). The law provides that the Form I-9's Section 1,

which is to be filled out before Section 2, is completed by the employee at the time of “hire,” 8 C.F.R. § 274a.2(b)(1)(i)(A), defined as “commencement of employment of an employee for wages or other remuneration.” 8 C.F.R. § 274a.2(c). However, according to the USCIS Handbook for Employers, the Form I-9 may be completed earlier, as long as the person has been offered and has accepted the job. *USCIS Handbook for Employers, M-274 (Mar. 2013)*, available at www.uscis.gov/files/form/m-274.pdf, p. 41.

E-Verify may generate a tentative nonconfirmation (“TNC”) response, which means that the information entered into E-Verify from the Form I-9 differs from SSA and/or DHS records. *E-Verify User Manual*, p. 27. A TNC does not necessarily mean an employee is unauthorized to work. *Id.* at 29. For example, an SSA TNC may occur because the employee’s date of birth is incorrect in SSA’s records. *Id.* E-Verify requires employers to provide employees with an opportunity to contest their TNCs, and if the employee chooses to do so, the employee has eight federal government work days to begin the TNC resolution process. E-Verify MOU, Art. III.A, ¶ 1, 3. In addition, an employer may not terminate, suspend, delay training, withhold pay, lower pay or take any other adverse action against an employee based on the employee’s decision to contest a TNC or while the TNC is still pending with DHS or SSA. E-Verify MOU, Art. II.C, ¶¶ 9-10. Therefore, an employer cannot require the employee to resolve the TNC as a condition of being placed on the working schedule. To the extent that an employee alleges that he or she was not permitted to continue working based on his or her immigration status or national origin—real or perceived—this office would investigate the allegation.

In your email, you also inquire about the use of socialsecurity.gov to ensure that a newly hired employee’s Social Security number “matches.” SSA provides a Social Security Number Verification Service (“SSNVS”), which allows registered users (employers and certain third-party submitters) to verify the names and Social Security Numbers (“SSNs”) of employees against SSA records for payroll purposes. SSA, *SSNVS Overview*, available at www.ssa.gov/employer/ssnv.htm. SSA will verify SSNs and names solely to ensure that the records of current or former employees are correct for the purpose of completing Internal Revenue Service Form W-2 (Wage and Tax Statement). SSA, *SSNVS Handbook*, p. 4, available at http://www.ssa.gov/employer/ssnvs_handbk.htm. It is illegal to use the service to verify SSNs of potential new hires or contractors. *SSNVS Handbook*, p. 4. We also direct you to OSC’s Name/Social Security number “No-Match” guidance for employers, available at <http://www.justice.gov/crt/about/osc/pdf/publications/SSA/FAQs.pdf>; <http://www.justice.gov/crt/about/osc/pdf/publications/SSA/Employers.pdf>. As our guidance makes clear, a Social Security name/number no-match can result from unreported name changes, inputting errors, or other reasons, and does not necessarily relate to an individual’s immigration status or employment authorization. Thus, to the extent an employee whose information did not clear socialsecurity.gov is delayed from working, he or she may allege discrimination in violation of the anti-discrimination provision.

We hope this information is helpful. If you have further questions, please contact our employer hotline at (800) 255-8155.

Sincerely,

A handwritten signature in blue ink, appearing to read "Seema Nanda". The signature is fluid and cursive, with the first name "Seema" and last name "Nanda" clearly distinguishable.

Seema Nanda
Deputy Special Counsel