

## How to correct a bad Social Security number: 4 tips for Texas employers

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*What should you do when John Smith notifies HR that your company reported wages under his Social Security number (SSN) but he has never worked for you? For starters, do not ignore the problem. Be proactive! There is a simple, responsive, and compliant way to address this ever-increasing problem in today's workplace.*

### ***Frequently occurring scenario***

John Smith is from New York and has never set foot in Texas. Recently, he was denied welfare benefits because a Texas company reported wages for his SSN. Little did you know that when you hired Jaime, a local employee, he provided a made-up SSN on his W-2. John Smith is an example of a typical innocent bystander—a victim of identity theft.

Although the Social Security Administration (SSA) provides employers the ability to verify employees' names with their SSNs (recall that under the Immigration and Nationality Act (INA), you must verify the identity and employment eligibility of employees hired after November 6, 1986), employers are vulnerable to potential claims of national origin discrimination and unfair immigration and employment practices under the Immigration Reform and Control Act (IRCA). However, ignoring SSN problems is never the answer.

When an identity theft victim notifies you that one of your employees is fraudulently using his SSN, take the opportunity to help the victim solve the problem. Failing to do so can open your company up to an investigation and lead to a "Notice of Inspection" from U.S. Immigration and Customs Enforcement (ICE). Attorneys at Monty & Ramirez, LLP, have developed a simple yet effective method to help employers sort through this complex situation.

### ***Step #1: Review***

First, review your company records to identify when the victim's SSN was used by a former or current employee. It is important to avoid knee-jerk reactions in this situation. Sometimes the issue arises because of an administrative error—e.g., incorrectly entering an employee's name or SSN. That is particularly common with individuals from Latin American countries who have multiple last names that are sometimes entered as middle names or not included. If there are still questions after eliminating administrative error, inform the employee of the discrepancy to see whether there is another explanation.

If the matter involves a current employee, proceed to Step 2. If the matter involves a former employee, skip Step 2 and move on to Step 3.

### ***Step #2: Evaluate***

Second, evaluate your company's policies regarding false information on job applications, employee dishonesty, and fraud. Remember that flexibility is key when developing remedial measures for violations of your policies. It is important to give yourself discretion in situations in which termination is warranted but not preferable.

### ***Step #3: Complete***

Third, complete and submit the current versions of Forms W-2c and W-3c for every year you reported the employee's wages to the SSA using the victim's SSN. For example, if the employee was employed from 2012 to 2016, you must file Forms W-2c and W-3c for 2012, 2013, 2014, 2015, and 2016. For Form W-2c, complete boxes A through I. In box D, "Employee's Corrected SSN," write in zeros—e.g., "000-00-0000." Be sure to mark the box that indicates you are correcting the employee's SSN. You do not have to complete boxes 1 through 20.

### ***Step #4: Notify***

Finally, notify the state unemployment benefits agency of the discrepancy. Although you have already submitted a correction to the SSA, the problem may have originated when the state unemployment benefits agency received an application from the victim or obtained a request for information from the victim's state agency. When you inform the agency of the situation, it will ensure that it has the correct information for the employee and the victim's SSN. That will help the agency in reporting wages to the correct individual.

### ***Bottom line***

The next time you get a call from a victim of identity theft, have a method to sort through the situation in place and plan to be proactive. Review, evaluate, complete, and notify. By following that approach, not only will you protect your company, but you will also help the victim.

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