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"Immigration & New Hires: Experiences in California" by Ines R. Flores-Chelson

What problems does a truss company encounter when hiring in Southern California? As the human resources manager of one of those companies, I can tell you that complying with the many existing laws, regulations and restrictions is something I encounter on a daily basis and work through to maintain cost-effective workflow while staying in compliance with the INS.

Early on, I had an interesting learning experience. Here's the story:

It started out like any other day. Four newly hired employees came in to give their employment identification and complete their W-4, I-9, drug screening and orientation. All identification checked out except one—John Doe. That's a surprise, I told myself, as he appeared very organized and professional. I continued with what was at that time the standard protocol for this situation: I wrote him a letter telling him he had ten working days to clear up the problem regarding his identification, proceeded to send him to his drug screening and orientation, and placed him on the work schedule for the interim.

Mr. Doe asked for specifics regarding what is required to work in the U.S. I made him a copy of the I-9 Lists of Acceptable Documents and made phone calls to the Social Security office, INS and the Labor Commission, securing whatever details they would offer. I summarized my conversations for Mr. Doe and offered him the names and phone numbers of those I called, in case he had any further questions.

During the ten-day window Mr. Doe had to clarify his identification, he drifted in to see me and let me know he had married an American Citizen the prior weekend and had turned the documents over to his attorney. He was expecting a letter verifying his identification from INS by the end of the week.

Mr. Doe showed up the following Monday with his Mexican passport that allowed him to be in the U.S., a copy of his school itinerary, and his marriage certificate. Unfortunately, the name on those documents was not the same as the name under which he was hired. The person I thought was John Doe was actually someone named Joe Smith, and all that had transpired since his date of hire was for naught. Mr. Doe/Smith was terminated from employment. Our company lost the time and training invested in this person—someone who was not whom he alleged he was and, for all intents and purposes, was not even our employee.

I knew there had to be a better way.

THE BIG PROBLEM—LEGISLATION IS CONFUSING

It is against the law for a company to hire an unauthorized alien. It is also illegal to discriminate against any individual when it comes to hiring or discharging because of his or her national origin or citizenship status. In other words, you can't not hire someone because you suspect he or she may be an unauthorized alien, but you can't verify authorization until after the individual is hired! These laws have everyone paranoid about what they can and cannot say or do. So, I decided to do a little more digging.

After being given the royal "pass the buck" from Social Security to Immigration, from Immigration to the Labor Board, and from the Labor Board back to Social Security, I discovered that no one really knew exactly how we were supposed to do this, only that the hiring policies must be consistent for both U.S. citizens and aliens. To make matters more interesting, I generally have an average of three new hires in the same day, not all of whom usually speak the same language.

RECOMMENDATION

After trial and error I found that the best way to proceed is as follows:

- Schedule an interview with a pool of qualified candidates. Schedule an appointment for the next day with those who are hired to take care of the W-4, I-9, drug test and orientation. Remind the new hires to bring proper employment identification.
- At the hiring appointment, advise the new hires that they have been hired on a conditional basis pending employment document verification and acceptable drug test results.
- Secure each person's identification as per the I-9 Lists of Acceptable Documents.
- While the new hires complete their W-4 and I-9 forms, copy their submitted identification and call the Social Security Administration (SSA) Office (800/772-1213).
 - a. The SSA will ask for your employer identification number (EIN), the name and address of your company, and if you are calling to verify someone currently employed with your company.
 - b. For each new hire, the SSA will ask for the Social Security Number (SSN) you are calling to verify, the employee's name, the employee's date of birth and whether the employee is male or female.
 - c. The SSA will either confirm your information or advise that there is a discrepancy in the information relayed. If there is a discrepancy, the SSA will ask you to have the employee report to the nearest SSA Office. The SSA will not inform you of what the discrepancy is.
 - d. Write a letter (in a language they will understand) to those employees that need to resolve identification problems. The letter should advise them that the SSA is reporting some type of discrepancy between the information they have on file and the information that was initially submitted by the new hire at the time of application for employment. Inform these new hires that they must report to the nearest SSA Office to resolve the divergence.

- Go back to your new, “conditionally” hired employees, who are patiently awaiting your return with completed W-4s and I-9s for your review. After reviewing said forms for completeness prepare drug test authorization forms and hand them out to those whose identification has been verified.
- For those employees whose identifications are in question, give them their discrepancy letters. Tell them that company procedures dictate that they resolve their discrepancies with the SSA before proceeding to the drug testing facility.
- Advise them to provide you with the Social Security verification letter (form #2458) as validation of resolution of their discrepancies.
- Advise these employees that they have ten working days to clear their discrepancies. If they fail to return to you within that time frame with validation of resolution of their discrepancies, you will assume they have decided against employment with your company, and you will terminate their employment.

Employees have ten days to clarify discrepancies without risk of losing their jobs, although whether those days are working days or calendar days is not clearly defined. Thus, as employers we should take the most liberal view of those ten days. The employer maintains the right as to when he issues work hours provided those work hours are consistent for both U.S. citizens and aliens.

I discovered early on that if I scheduled work hours for those who needed to clear their discrepancies, they either had no incentive to correct them, or they never intended to clear the discrepancies in the first place and were just in it for the two weeks of work. I found that scheduling zero work hours allows these new hires the time and incentive they need to promptly clear their discrepancies without fear of losing their jobs. This process has been cost effective as it has saved the company an average of \$300 per new hire in drug test costs and orientation/training time. (Note that these figures do not include other miscellaneous costs such as workers' compensation, employer portion of the taxes, etc.)

It is essential to the success of any business to implement firm measures that are both cost-efficient and successful. Doing so will result in investing time and money in only those employees who can legally stay with your company.

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