

Immigration Status and Your Rights as a Worker

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

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July 2002

If I am undocumented but I work, do I have any rights? Yes! Even though it is unlawful for an employer to knowingly hire a worker who is undocumented, undocumented workers still have many of the same workplace rights as documented workers.

- ✓ **Right to organize:** It is illegal for an employer to punish or threaten you for organizing to improve your work conditions.
- ✓ **Right to be paid:** You have the right to be paid minimum wage and overtime. If you do not receive all of the wages for time you actually worked, you can recover those wages.
- ✓ **Right to be free from discrimination:** It is illegal for an employer to discriminate against or harass you based on: race, color, religion, age, disability, national origin or sex.
- ✓ **Right to be safe on the job:** You are protected by workplace health and safety protections.
- ✓ **Right to remain silent:** After you have been hired, you have the right to remain silent when your employer or anyone else inquires about your immigration status.

Then, what was the Supreme Court's decision in *Hoffman Plastic* about? In that case, an undocumented worker was fired because he was involved in organizing a union at his workplace. Firing him was illegal under the National Labor Relations Act (NLRA), but the Supreme Court said the worker could not receive backpay under NLRA because he was undocumented. Backpay is money the employer is required to pay a worker to make up for wages the worker would have earned if he had not been illegally fired.

Why do employers ask workers to show documents that prove they are documented (authorized to work in the U.S.)? In 1986, Congress enacted the Immigration Reform and Control Act of 1986 (IRCA). IRCA made it unlawful for any employer to *knowingly* hire a worker who is not authorized to work in this country. Employers are required to verify the identity and employment eligibility of all employees hired after November 6, 1986, and to complete a special government form-called an Employment Eligibility Verification Form or an "I-9 form" for short-for each new employee hired.

Once I have filled out an I-9 form, will I have to show documents to my employer again to re-verify that I am authorized to work? No. Once you have filled out an I-9 form, you are considered to be a "continuing employee" and therefore you not required to fill out a new I-9 form or to show your documents again while you are working for the same employer. An exception to this statement is when an employer is required by law to re-verify its employees' documents.

Is my employer required to keep my documents? No. Your employer does not need to keep your original documents. You should not agree to give them to your employer.

Can my employer ask to re-verify my documents because I "appear foreign"? No. An employer cannot single out only those employees who "appear to be foreign or immigrants" for re-verification. This could be considered document abuse, as well as possibly national origin or citizenship discrimination, depending on the facts.

Under what circumstances must an employer re-verify a worker's documents?

- ✓ When the information the employee provided on the I-9 form indicates his or her work authorization is about to or has expired.
- ✓ When the employer has been audited by the INS and informed that there are problems with some of its workers' documents.
- ✓ When the employer learns that the employee is not work authorized.
- ✓ When an employer rehires an employee, the employer must inspect the I-9 form and determine that the form relates to the employee and that the employee is still eligible to work.
- ✓

What does it mean if my employer receives a letter from the Social Security Administration (SSA) saying my name and/or Social Security number do not match up in their records? The SSA sends no-match letters to make sure its records and database are accurate and to ensure that SSA maintains an accurate earnings record for each employee. The SSA uses this information to maintain an earnings record for employees and decide if an employee can receive Social Security benefit payments and the amount of each payment.

SSA no-match letters have nothing to do with the Immigration and Naturalization Service (INS) or enforcement of the Immigration Law.

Should my employer require me to bring in documents to re-verify that I am authorized to work if he or she receives a no-match letter from the SSA? No. The receipt of a no-match letter, by itself, does not give employers notice that a worker is not authorized to work. Thus, a letter from SSA, without more, does not warrant an employer's request that employees listed on the letter bring in their Social Security cards or other immigration-related documentation.

If employers do make this type of request based only on the receipt of a no-match letter, they may be violating the law. If this situation arises, employees are encouraged to contact a trusted community group or worker advocate in their area for assistance.

Is my employer required to fire me if my name appears on a no-match letter? No. Employers should not lay-off, fire, suspend, intimidate, discriminate or threaten employees just because their names appear on the no-match letter. In fact, an employer who does any of the following may be violating the law:

- single out and/or discriminate against employees of certain national origins or ethnic groups
- single out and/or retaliate against employees because they filed a claim or complaint with an administrative agency or court
- single out and/or retaliate against employees for union organizing activities or other union protected activities.

What should I do if my employer tells me he or she received a no-match letter saying that my name and Social Security number do not match up? One of your most basic rights is the right to remain silent when an employer inquires about your legal status after you have been hired. There are some other things you should do as well:

- ✓ Ask for a copy of the letter to confirm that your employer did receive a SSA no-match letter.
- ✓ If you can correct the information, you may choose to provide the corrections to your employer.
- ✓ If you cannot correct the information, there is nothing for you to do. For instance, if you know that the local SSA office cannot help you, it does not make sense for you to go there.
- ✓ If you work in a unionized workplace, you should talk to your union representative (if you have one) for information and assistance on no-match issues because your collective bargaining agreement often will provide you with the best protections.
- ✓ **Seek assistance from a trusted community group or worker advocate.**