

# Client Alert

## Is your workers' comp carrier also verifying your employees' eligibility to work?



Some insurance companies may be denying payment of benefits on the basis that unauthorized workers should not have been employed in the first place and thus are not eligible to be returned to work (or receive payments for the difference in wages for light duty work versus the employee's regular position). How does the company know that the worker is unauthorized? Well, some may be running the Social Security Numbers of your employees through either E-Verify or the Social Security Number Verification Service. [An aside: neither program authorizes its use for that purpose, and the [SSNVS handbook](#) specifically prohibits third parties, i.e.,

someone other than the employer, from using it to take action that might be deemed adverse to the employee.]

This can create several issues for employers. First, an employer could have some liability to the employee if the employer knows that the SSN is being used for an improper purpose. Second, if the carrier makes the employer aware that the SSN was returned as mismatched or that the carrier has reason to believe the employee is not authorized to work, the employer must determine what steps it wishes to take to further verify employment eligibility. If it doesn't take any steps, it runs the risk of being considered "on notice" that a potentially unauthorized worker is in its employ.

Employers should consider periodically informing the carriers that any information provided is to be used for its authorized and intended purpose only. Taking it a step further, employers could also provide a statement to the carrier that the SSN is not to be used for any unauthorized purpose, including specifically any attempts to determine the work eligibility status of the employee.

In the FYI category--Tennessee's workers' compensation statutes provide that unauthorized workers are still eligible to receive certain benefits. The law places a limit on the amount of those benefits that can be awarded versus what would be available to an authorized employee. [See [T.C.A. 50-6-241\(e\)\(1\)](#)]

*Hunter, Smith & Davis, LLP*  
1212 N. Eastman Road  
P.O. Box 3740  
Kingsport, Tennessee 37664-0740  
(423) 378-8800 direct dial  
(423) 378-8801 facsimile

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