



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

MEMORANDUM

December 8, 2008

TO: Chris Alund

FROM: Maria L. Colavito
By: John D. Charles

SUBJECT: Social Security Numbers on Certified Payrolls

Counsel's Office has been asked whether the Department may continue to require that Social Security Numbers (SSN) be included on certified payrolls submitted by contractors and subcontractors engaging in public works projects. This issue had arisen several times over the last few years, with different organizations arguing that there is no legal basis for requiring that a social security number be included on the certified payroll. Our current requirement that such numbers be included is similar to the custom and practice of the federal Department of Labor with regard to their enforcement of federal Davis Bacon requirements. Federal forms used in that program specifically require the production of a SSN, presumably for identification purposes.

The Department has certain inherent authority to require the production of records in regard to its enforcement of certain employment matters. A requirement that a SSN be included on a document that the Department has authority to obtain and review is a reasonable one, well within the statutory and regulatory authority of the Commissioner and the Department. The Department requires the production of SSNs in connection with its enforcement of various portions of the Labor Law, including requirements relative to the payment of minimum wages and unemployment insurance contributions. Social security numbers are required to be maintained by employers under 12 NYCRR 142-2.6 as follows:

“§ 141-2.1 Employer records

Employers shall make the following records or sworn certified copies thereof available upon request of the commissioner, or his authorized representative, at the place of employment:

(a) Payroll records. Every employer shall establish, maintain and preserve for not less than six years, payroll records which shall show for each employee:

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- (1) name and address;
- (2) apartment number if allowance for apartment is claimed;
- (3) social security number;
- (4) occupational classification (resident janitor, nonresident janitor, "all other" workers) and wage rate;
- (5) for janitors in residential buildings:
 - (i) number of units in building;
- (6) for "all other" employees: the number of hours worked daily and weekly;
- (7) cash wages;
- (8) allowances claimed as part of the minimum wage, listing separately the value of the apartment and each utility supplied;
- (9) gross wages (cash wages plus allowances);
- (10) legal deductions;
- (11) net wages; and
- (12) student classification."

Given that the Commissioner has the authority to request the various required records, including social security numbers, that authority would extend to the Bureau of Public Work when it requests that such information be provided in the context of a certified payroll.

In addition, the Governors Executive Order No.17 established the Joint Enforcement Task Force on Employee Misclassification and charged it with investigating and prosecuting employer use of employee misclassification to avoid liability for payment of employment related taxes and to deprive employees of the protections available to them under law. Under the terms of the Executive Order, Task Force participants, including the Department of Labor, are required to share information related to employee misclassification with one another and each office or division of the state is required to furnish such information required to accomplish the Task Force's purposes. The Task Force has already conducted numerous joint investigations of employers, including public work employers, and follows up such joint investigations with appropriate civil or criminal prosecution. At the same time, the Department has engaged in intra-agency data sharing and data sharing with other public entities as directed in the Executive Order; such data sharing is made more meaningful when there is an identifier available for cross-matching and verification purposes. The SSN plays an integral role in this regard. Social security numbers are also useful in locating individuals for whom the Department has obtained recoveries of underpaid wages and for sorting out individuals with similar or identical names on certified payrolls. For all of the above reasons, the use of Social Security numbers and the placement of those numbers on certified payrolls serve an important governmental purpose.

However, it remains within the discretion of the Commissioner as to whether the entire SSN will be required on a certified payroll, or whether the last four digits of such number will be acceptable for the Department's purposes. The Department is cognizant of the concerns that attend the potential for misuse or inadvertent disclosure of Social Security Numbers. Identity theft is a growing problem and we are sympathetic to contractors' concerns with regard to inclusion of this information on payrolls if another identifier will suffice. For these reasons, the substitution of the use of the last four digits of the SSN for the entire number is acceptable to the

Department and would satisfy our programmatic and legal needs at the present time. At the same time, use of the last four digits of the SSN will eliminate the confidentiality concerns sometimes raised by employers when required on certified payrolls but also addresses demands from state contracting entities for a statutory basis for requesting the full SSN.

Finally, it should be noted that even if the complete SSN is not included on the certified payrolls, those numbers would be accessible by the Bureau of Public Work through the Bureau's access to all employer's records, which contain SSNs. This opinion does not affect the Department's ability to request and receive the entire SSN from employers during the course of its public work investigations nor would it prevent the Department from seeking the full SSN on certified payrolls should such disclosures be deemed necessary again in the future.

cc: Maria Colavito
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