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Dear Karin:

Your question is whether J-1 visa holders may commence work with their employers if they have not yet received a social security number or card. The Internal Revenue Service's (IRS) regulations permit J-1 employees to commence working before they have received, or even applied for, their social security cards from the Social Security Administration (SSA).

Under the IRS regulations, an employee with a J-1 visa work authorization may begin working even though the employee has not yet received a social security card, or even applied for one. An employer can require an employee to provide one of the following on the first day of work: (1) the social security card or number and name exactly as shown on the card; (2) proof of application for a card in the form of a receipt, application acknowledgment, or uncertified copy of the application; (3) a copy of a completed Form SS-5; or (4) a statement including basic personal data. Once one of these has been provided the employee may start work. Once the card is received, the employee must promptly provide the card number. Provided the employer has complied with the above, it will have satisfied its obligations under the IRS regulations for gathering and reporting employee social security numbers.

The Federal Insurance Compensation Act (FICA) exempts J-1 visa holders from paying social security taxes. 26 U.S.C. § 3121(b)(19) (2000). The requirement that each such employee obtain a social security number is for the employer's reporting convenience, not because any FICA taxes actually would be due from the wages earned by the J-1 visa holders.

IRS regulations allow employees to commence working without a social security card in three situations:

A. An employee may not have applied for a card, or only recently applied and not yet received a card. In such cases, an employee may commence work immediately. To begin work, the employee must complete an Application for a Social Security Card (Form SS-5) and provide a copy of it to the employer. 26 C.F.R. § 31.6011(b)-2(b)(1)(iv) (2003). If, for any reason, a copy of the Form SS-5 is unavailable, the J-visa holder may provide to his or her employer instead a written, dated statement, signed by the employee. The statement should include the employee's full name, address, date and place of birth, sex, father's full name, and mother's full name before marriage. It should also state whether the employee has previously filed a Form SS-5 and, if so, the date and place of filing. The employee may commence working after submitting such a statement to the employer. It remains the employee's responsibility to submit an application for a card to the SSA within seven (7) days of commencing employment. 26 C.F.R. § 31.6011(b)-2(a)(2) (2003). No statutory deadline prevents an employee from continuing to work if the card has not arrived. The employee's only obligation, once application for a card has been made, is to "promptly" show the card to the employer upon its receipt.

B. An employee has applied for a card, but has not received it. During processing, the SSA typically provides card applicants with proof that they have applied for their cards -- either in the form of a receipt, an application acknowledgment, or an uncertified copy of the application. The applicant should provide a copy of this proof of application to the employer. 26 C.F.R. § 31.6011(b)-2(b)(1)(iii) (2003). Again, once the employee actually receives a card, it should be shown promptly to the employer. 26 C.F.R. § 31.6011(b)-2(b)(2) (2003).

C. An employee may have received a card, but not have it available to show to the employer on the first day of work. In lieu of presenting the actual card, an employee who knows the account number may provide it and his or her name exactly as it appears on the card. 26 C.F.R. § 31.6011(b)-2(b)(1)(ii) (2003).

If an employer must file W-2 forms with the IRS before the employee has received a card, the employer should enter "Applied For" in the W-2 form field that is provided for entering the social security number. When the employee receives the card, the employee should promptly show it to the employer and the employer should file a Form W-2c, Corrected Wage and Tax Statement, to update its prior submission with the employee's social security number.

If the employee started work by presenting proof of application for a card (e.g. a receipt, an acknowledgment letter, or uncertified copy of the application), the employer should complete the Form W-2 with the name and address of the employee as shown on the proof of application, together with the expiration date of the proof of application, and the issuing office address. 26 C.F.R. § 31.6011(b)-2(c)(3)(i) (2003). Where an employee provided the employer with a Form SS-5 or a statement, the employer should attach a copy of the form or statement to the W-2. 26 C.F.R. § 31.6011(b)-2(c)(3)(ii) (2003).

If the employee concludes employment before receiving a card, it is the employee's duty to provide promptly the card number along with the employee's name to the former employer after this information first becomes available to the employee. 26 C.F.R. § 31.6011(b)-2(b)(2) (2003). An employee may fail to provide the card number to the employer. Mr. Ronald P. Rivelli, Chief, Partnerships, Trusts, and International Section, Internal Revenue Service, explained that an employer has discharged its duty under the IRS regulations so long as it has otherwise complied with 26 C.F.R. § 31.6011(b)-2 and has made a request that the employee supply his social security number and a copy of his social security card within a reasonable period after receiving such number and card. The J-1 visa exchange visitor employee will be subject to withholding at the maximum rate until he or she has provided the employer with his or her social security number.

Please contact me with any additional questions.

Sincerely,

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Member of the Florida Bar. Licensed by Federal Regulations at 8 CFR s.292.1(a)(1) to represent clients in Immigration and Naturalization Law matters in all 50 States.