

# **THE RELEVANCY OF IMMIGRATION STATUS IN STATE AND FEDERAL LEGAL PROCEEDINGS.**

By, Carlos E. Mahoney, Esq.

## **Introduction:**

Within the past decade, the State of North Carolina experienced a tremendous increase in the number of Latinos (primarily Mexican and Central American) living, residing, and working in this State. While many Latinos have proper immigration documents, there are some workers who are not properly inside the United States, and are commonly referred to as “undocumented workers.”

Like citizens and residents, undocumented workers suffer injuries on the job, discrimination in employment, and civil rights violations. However, their immigration status leaves them susceptible to abuse and reluctant to enforce their legal rights through governmental agencies and the courts due to fears of incarceration and deportation. This article will address the relevancy of immigration status in both State and Federal legal proceedings.

## **Workers’ Compensation:**

In recent years North Carolina employers have challenged the rights of undocumented workers to receive workers’ compensation benefits for on-the-job injuries. The North Carolina Court of Appeals has generally rejected the arguments of employers that undocumented workers should receive no benefits or limited benefits under the workers’ compensation laws.

In *Rivera v. Trapp*, 135 N.C. App. 296, 519 S.E.2d 777 (1999), the Court of Appeals held that undocumented workers are entitled to the protections of the North Carolina Workers’ Compensation Act, and allowed to receive temporary total disability benefits. In *Ruiz v. Belk Masonry Co. Inc.*, 148 N.C. App. 675, 559 S.E.2d 249, *petition for disc. rev. denied*, 356 N.C. 166, 568 S.E.2d 610 (2002), the Court determined that federal law (Immigration Reform and Control Act) prohibiting the hiring of illegal aliens does not prevent undocumented workers from receiving workers’ compensation benefits, solely because of their immigration status.

In *Gayton v. Gage Carolina Metals, Inc.*, 149 N.C. App. 346, 560 S.E.2d 870 (2002), the North Carolina Court of Appeals found that a worker’s immigration status may be relevant for determining whether or not an employee should be able to return to work. The Court held that if an employer produces sufficient evidence that the worker is capable of finding employment, "but for" his immigration status, then benefits may be terminated.

The *Rivera* and *Trapp* decisions clearly allow undocumented workers to receive workers’ compensation benefits on equal footing with other workers in this State, and makes immigration status generally not relevant in a workers’ compensation case. Unfortunately, the *Gayton* decision establishes that the immigration status of an employee may be relevant in the context of finding suitable employment for a worker so as to terminate disability benefits.

## **RETALIATION FOR UNION ACTIVITIES UNDER NLRA:**

The National Labor Relations Act (NLRA) is a federal act which offers legal protections to employees engaged in union activity. However, these legal protections do not fully apply to undocumented workers. In *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 122 S.Ct. 1275 (2002), the United States Supreme Court was asked to determine whether or not the National Labor Relations Board could award back-pay (lost wages) to an undocumented worker who was fired because of union activity. On March 27, 2002, the Supreme Court held that awarding back pay to undocumented workers is contrary to federal policy, as expressed in the Immigration Reform Control Act. Therefore, an undocumented employee will not be entitled to receive monetary damages in the form of back-pay due to an illegal firing under the NLRA.

## **FAIR LABOR STANDARDS ACT WAGE AND HOUR ACT:**

The Fair Labor Standards Act (FLSA) guarantees that hourly employees are paid a minimum wage, receive overtime pay, and are not retaliated for demanding proper compensation under the FLSA. In North Carolina, the Wage and Hour Act implements most of the laws and policies found in the FLSA. Employers have sought to curb the ability of undocumented workers to enforce their rights under the FLSA. United States District Courts in California and New York have held that the immigration status of workers involved in a FLSA action is not relevant, and may not be discovered by the employer. In *Zeng Liu v. Donna*

*Karan Int'l*, 207 F.Supp.2d 191 (S.D. N.Y., June 11, 2002), the District Court further found that any possible relevancy of immigration status is outweighed by the risk of injury to the workers, namely the danger of intimidation by the employer. The FLSA is an excellent law which protects documented and undocumented workers from exploitation and retaliation by their employers. Therefore evidence of immigration status should not be relevant in a Fair Labor Standards or Wage and Hour case. However, the cases presented in this section do not constitute binding law in North Carolina.

## **CONCLUSION:**

As a general proposition, immigration status should not be admissible or relevant in many aspects of labor law. Labor laws and regulations, with the notable exception of the National Labor Relations Act, were designed to protect all employees, not just citizens, residents, and other workers with proper immigration papers. However, most undocumented workers will be wary of governmental agencies and the courts, and reluctant to enforce their rights due to possible deportation. Immigrant advocates, attorneys, and governmental regulators must strive to protect the rights of undocumented workers in North Carolina. Otherwise, our society will suffer as a whole.