

Understanding the US Supreme Court's Decision in Hoffman Plastic Compounds v. NLRB

NELP

Fact Sheet for Immigrant Worker Advocates

Advocating for the working poor and the unemployed

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On March 27, 2002, the US Supreme Court decided, in a case called Hoffman Plastic Compounds v NLRB, that undocumented immigrants who have been fired because they participated in union activities are not entitled to back pay under the National Labor Relations Act. This decision has an impact on all employees, regardless of immigration or citizenship status, who try to improve their working conditions.

In this case, Jose Castro had been hired at a low-paying job in a plant in Los Angeles. When he helped organize a union to better conditions at the plant, he was illegally terminated. One of the Justices of the Supreme Court called his employer's conduct "crude," and "obviously illegal." Nonetheless, by a slim vote of 5-4, the Supreme Court ruled that undocumented immigrants like Mr. Castro are not entitled to back pay under our country's collective bargaining law, the National Labor Relations Act, the "NLRA."

Because there has been an enormous amount of misinformation circulated about this decision, it is very important to understand what this decision means and what it does not mean:

The Court's ruling in this case applies where an undocumented immigrant seeks "back pay" because she was unlawfully fired in violation of the NLRA. "Back pay" has a very specific meaning under the law: it is a monetary payment that compensates a worker for wages he or she would have earned had the employer not fired her – that is, the wages he or she would have earned if s/he had been able to keep working at the company. "Back pay" does not mean wages a worker actually earned. **Any worker, regardless of immigration status, is fully entitled to be paid for the time s/he has actually worked, and Hoffman Plastics does not change that.**

This case did not affect the legal rights that undocumented employees are entitled to under all other workplace laws. For example:

- Undocumented workers are still covered under the NLRA and still are entitled to organize a union to improve wages and working conditions. Employers are still bound to follow the law. Those who violate the NLRA will still be liable for cease and desist orders, and potentially contempt citations, if they violate the law.
- Undocumented workers are still protected from employment discrimination. Thus, for example, those who have been discriminated against because of their national origin, race, color, disability, or religion, or who have been sexually harassed at work, are still entitled to bring legal action, and may still recover compensatory ("pain and suffering") and punitive damages (monetary awards meant to punish the employer) if they win their cases.

- Undocumented workers are covered under the federal minimum wage and overtime law and a whole host of state wage and hour laws. **Undocumented workers are still entitled to recover every penny of wages that unscrupulous employers have underpaid them**, and state and federal agencies must still enforce those rights.
- Undocumented workers who have been fired or unfairly treated because they stood up for their rights or those of fellow workers may still bring claims of retaliation under every workplace law, and they can recover compensatory and punitive damages if they win.
- In nearly every state, undocumented workers who are injured on the job are entitled to the protections of state workers' compensation laws.
- Undocumented workers are entitled to lost wages as part of a tort recovery, and to damages generally for personal injuries and for wrongful death.
- Undocumented workers are entitled to a broad range of Constitutional and civil rights protections.

The Supreme Court's decision is unfair for immigrants, both documented and undocumented, and for everyone who believes that labor rights ought to be enforceable. Millions of undocumented immigrants in our country desperately want to legalize their status, but because of restrictive immigration laws, they are unable to do so. One of the unintended consequences of IRCA has been to force hardworking immigrants to buy and use false documents as the only means to earn a living in the United States. The document fraud laws simply serve to criminalize the means by which undocumented workers seek and obtain work.

Some employers in the U.S. hire undocumented immigrant workers because it is assumed they'll be less likely to complain. Therefore, undocumented workers often work at low-paying and highly dangerous jobs. This decision rewards employers who seek out undocumented immigrant workers for the lowest-paying and most dangerous jobs. It creates an economic incentive for unscrupulous employers to hire and exploit undocumented workers. It gives those employers an unfair competition advantage over employers that treat workers lawfully and fairly.

For over 16 years, the immigration laws have provided for employer sanctions against employers who "knowingly" hire undocumented workers. However, rather than stemming "illegal immigration," employer sanctions have served as a weapon against workers who try to organize a union, complain about workplace violations, and improve conditions for all workers. The Hoffman Plastics decision provides employers with an even stronger weapon, since employers will know that they will not face serious monetary penalties for their illegal, anti-labor tactics.

In a nation that prides itself on the principle of equality, this limitation cannot long survive. Immigrants, their unions and all working people must work together to protect undocumented workers from retaliation in the first instance, and make sure that it is punished whenever and wherever it occurs.