

PUBLICATION

Undocumented Aliens Lose Workers Comp Benefits in Michigan

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The Michigan Court of Appeals has held that undocumented workers cannot receive workers compensation weekly benefits from the point that the employer terminates their employment for presentation of false documents. This raises tricky questions for employers of undocumented aliens in Michigan and in other states. The case is *Sanchez v. Eagle Alloy, Inc.*, No. 238003 WCAC (Jan. 07, 2003).

Two workers in Michigan sustained injuries while on the job. The employer tried three theories to avoid workers compensation benefits. The court chose the option that was probably most advantageous to employers.

The employer argued that illegal aliens are not "employees" under the workers compensation law, but the court found that even illegal aliens are covered generally under the particular Michigan statute. The employer argued that there was not a valid "contract for hire" because of the workers' misrepresentation of their status in obtaining employment, but the court found that the contract of work for pay was completed. These two holdings had the effect of making sure that the claims of injury for Michigan workers for injury arising out of their employment will be limited by the workers compensation scheme and cannot be brought in tort suits, where the damages might be unlimited. It also assured them the medical treatment afforded by workers compensation.

The court also granted weekly benefits that were paid before the employer realized that the workers were disqualified from working because of their lack of valid work authorization documents. But the court used a 1985 amendment to the statute— designed to prevent weekly payments to workers who were in jail at the time because of a crime— to find that the workers were ineligible for further weekly benefits, because their presentation of false documents for work authorization made them "unable to obtain or perform work because of commission of a crime." The court relied significantly on the U.S. Supreme Court's decision in *Hoffman* to reach this conclusion.

This decision will have the effect of encouraging Michigan employers defending workers compensation suits to delve into a worker's immigration status, hoping to find out the worker is an undocumented alien who presented false documents. More importantly, it could have the long term effect of encouraging Michigan employers subtly to find ways to hire workers who are suspected of using false documents for the most dangerous jobs, because the employers know that their potential liability to such workers will be capped in two different ways. Undocumented workers in such cases might attempt to prove that the employer knew or reasonably suspected all along that the documents presented for I-9 purposes were false, but the effect of that argument, even with proof, will be uncertain.

The decision was made based on the language of the particular Michigan statute involved. Other states' workers compensation laws do not necessarily have the same language, and other states courts might not interpret the same or similar language the same way as the Michigan Court of Appeals, particularly because of the policy implications. Constitutional arguments, particularly under the "equal protection" clause, might be invoked by workers. But employers in other states will be citing the Michigan decision in other states as they try to make similar limitations on workers compensation awards to undocumented aliens.

How We Can Help

The Immigration Team of Baker Donelson advises clients in relation to immigration-related workplace laws on the federal level, and in relation to state law issues involving states in which attorneys in our firm are licensed to practice law. We represent employers in defending charges of immigration related employment practices. We have lawyers with former NLRB experience who represent employers in relation to union matters on a nationwide basis. Our Labor & Employment Law Group represents employers in a wide range of workplace issues.