

# Wage Recovery for Illegal Aliens In New York Under the Labor Law

The New York courts have had to wrestle with the issue of whether the remedies typically available to workers under the Labor Law are applicable to illegal aliens. An illegal alien's ability to recover lost wages under the New York Labor Law became a prominent issue after Congress enacted the Federal Immigration Reform and Control Act in 1986 (IRCA), which makes it illegal for an employer "to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien" and for an illegal alien "to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document" in order to obtain employment.<sup>1</sup>

While IRCA was intended to curtail illegal immigration and the employment of illegal aliens, it remained undecided whether IRCA should preempt the Labor Law and, ultimately, bar an illegal alien from receiving lost wages for injuries sustained on the job. The New York courts have had to decide whether an illegal alien could be compensated for a violation of the Labor Law statute, which holds contractors and owners liable for a worker's injury due to a failure to adhere to certain safety practices, despite the fact that the employment relationship itself was created by unlawful conduct.

The U.S. Supreme Court approached this issue in *Hoffman Plastic Compounds, Inc. v. N.L.R.B.* and ultimately barred an illegal alien from receiving backpay after he was injured.<sup>2</sup> The Court reasoned that because the worker had affirmatively tendered false documents to secure his employment, awarding backpay would condone and encourage the very conduct that IRCA proscribed. In interpreting the congressional intent behind IRCA, the Court held that because



By  
**Andrea M.  
Alonso**



And  
**Kevin G.  
Faley**

the statute explicitly made tendering false documentation to secure employment a criminal offense, it would go against federal public policy to allow backpay to a worker who had done precisely that.

IRCA addressed two principal wrongs, first, the unlawful act of the employers in hiring undocumented workers, and second, the worker's act of tendering false documents

---

With the question of illegal immigration unresolved on the national scale, the New York courts appear to have carved out their own rule.

to secure employment. *Hoffman* urged that the second wrong would remain undeterred if alien workers were allowed to recover despite violating the statute. However, the *Hoffman* analysis was countered by the argument that if IRCA preempted the Labor Law, then the employer would be able to escape liability for an employee's injuries.

Despite the civil and criminal penalties an employer could face under IRCA, barring an alien worker's claim for lost wages could send employers the message that hiring illegal aliens in violation of IRCA is not only permissible, but profitable since the employer would avoid the liability costs for employee injuries that would normally be imposed by the Labor Law if the worker were a legal United States resident.

When the preemption issue was taken up by the First Department in the 2004 case of *Sanango v. 200 East 16th Street Housing Corp.*, the court deemed preemption of the

Labor Law necessary to maintain the goals of IRCA.<sup>3</sup> However, only a year later the Second Department's decision in *Majlinger v. Cassino Contracting Corp.* relied on countervailing reasoning and deemed preemption of the Labor Law improper since neither *Hoffman* nor IRCA prohibits the compensation that the Labor Law provides.<sup>4</sup> The court reasoned that an alien worker's presence in the United States, though illegal under IRCA, is insufficient in itself to deny the worker damages that he is rightfully entitled to under the Labor Law. The Court of Appeals later consolidated Stanislaw Majlinger's appeal with the appeal from the First Department of *Balbuena v. IDR Realty LLC* in a case that would heavily impact the alien worker's ability to recover lost wages.<sup>5</sup>

## Distinguishing 'Hoffman'

In reaffirming the impropriety of federal preemption, *Balbuena* recognized that IRCA preemption was only intended to apply to civil fines and penalties imposed by state law. Since a personal injury action is not a civil penalty against a tortfeasor, but rather compensatory relief for the worker, the Court recognized that there is no conflict that would warrant preemption. Moreover, while illegal activity can bar civil remedies from being awarded, the actual labor itself performed by Mr. Majlinger and Gorgonio Balbuena was legal.

The Court in *Balbuena* also made two key factual distinctions from *Hoffman*. First, it noted that unlike in *Hoffman*, Msrs. Balbuena and Majlinger had actually been injured from the work-related accident, and that their injuries would impede their ability to be employed in the future. Second, unlike in *Hoffman*, neither Msrs. Balbuena nor Majlinger had used fraudulent papers to obtain employment, but rather maintained employment as undocumented workers. In drawing this distinction, a crucial part of the analysis now became whether or not the alien had tendered illegal documentation to secure employment or merely worked as an undocumented

---

ANDREA M. ALONSO and KEVIN G. FALEY are partners at *Morris Duffy Alonso & Faley*. JENNA MASTRODDI, a paralegal at the firm, assisted in the preparation of this article.

# Wage Recovery

« Continued from page 4

worker without having produced any information at all. The Court found that in absence of proof that the alien worker knowingly or recklessly tendered false documents to obtain employment, the worker was not precluded from claiming lost wages.

In creating a middle ground approach, the Court allowed the jury to consider the worker's removability from the country in deciding what, if any, compensation should be awarded. An undocumented worker could introduce proof that he has received, was about to receive, or was in the process of obtaining authorization documents that would likely enable him to retain future legal U.S. employment.

Conversely, a defendant could argue that awarding future wages is not appropriate because authorization for legal U.S. employment had not been sought or that approval was sought and denied. It would be left for the jury to decide whether U.S. wages or wages in the worker's home country should be awarded.

## Addressing Discrepancies

Shortly after *Balbuena*, the U.S. Court of Appeals for the Second Circuit attempted to resolve the apparent discrepancies in the case law. In *Madeira v. Affordable Hous. Found., Inc.*, it struck down the middle ground reached in *Balbuena* and now allowed alien workers to receive compensation at U.S. pay rates.<sup>6</sup> The court based its decision on certain key acknowledgments, namely that IRCA does not authorize an employer to disobey safety regulations that ultimately cause a worker to sustain personal injury.

Also acknowledged was the fact that an employee who has not submitted false documents does not violate IRCA, but rather it is the employer who violates IRCA by hiring the worker in the first place. Finally, the court asserted that since both the illegal employment relationship as well as the wrongful conduct causing the injury were procured by someone other than the alien (namely the employer), thus the worker should not be punished for the wrongful acts of others.

*Madeira* also distinguished itself once again from *Hoffman* and held that the alien worker was entitled to compensation for his injuries only because he had not tendered any false documents as in *Hoffman*. Though *Madeira* made more progress toward a bright line rule, the court still clung to the *Balbuena* distinction of whether or not the worker affirmatively produced false documentation to secure employment.

While it was settled that IRCA does not preempt the Labor Law and that U.S.-based lost wages could be awarded to undocumented workers injured on the job, the alien worker who affirmatively procured false documentation to obtain employment was still precluded from recovery.

This barrier was removed by the Third Department's decision in *Amoah v. Mallah Mgmt, LLC*.<sup>7</sup> In *Amoah*, the court allowed an illegal alien to recover under Workers' Compensation after he was injured on the job as a parking garage attendant. *Amoah* finally deemed it immaterial that the worker had affirmatively tendered false information to secure employment because, as the court reasoned, the worker's unclean hands did not negate the employer's obligation to adhere to the New York Labor Laws.

In addressing the IRCA objectives, the court recognized that denying compensation to illegal aliens would not likely deter an alien from violating IRCA and that it would certainly give tainted incentives to those who employ these workers. *Amoah* noted that just as employees are not likely to be deterred from violating IRCA, the employer certainly will not be deterred from violating the Labor Law as long as the employer can induce the worker to produce documentation, which will inevitably be fraudulent.

In moving away from the *Hoffman* and *Balbuena* precedents, *Amoah* held that the only purpose to be served by barring an illegal alien from being compensated is to encourage employers to violate both IRCA and the Labor Law, without fear that either will be enforced. Since IRCA seeks to deter employment of undocumented aliens by imposing penalties upon employers, allowing employers to escape liability for lost wages under the Labor Law would make the alien worker bear the brunt of the employer's illegal conduct.

*Amoah* loosened the grip of earlier cases by shifting the focus from the employee's wrongdoing to the wrongdoing of the employer. While *Amoah* dealt specifically with Workers' Compensation, it seems to suggest that a worker's unclean hands no longer preclude compensation under the Labor Law regardless of the remedy sought.

## Conclusion

In sum, the consensus among the New York courts is that an illegal alien worker who is injured on the job pursuant to New York Labor Law §§240, 241(6), and 200 can receive compensation from the employer. Thus far, lost wages and even Workers' Compensation have been awarded to illegal alien workers; however, the type of remedy sought may have a bearing on a court's decision. The recent lower court decision in *Jara v. Strong Steel Doors, Inc.* allowed an illegal alien to claim quantum merit and unjust enrichment after being wrongfully terminated from his job, even though he tendered false documents.<sup>8</sup>

However, an illegal alien's avenues of redress is not yet without limits. In *Ramroop v. Flexo-Craft Printing, Inc.*, an alien who had already claimed temporary disability benefits under Workers' Compensation was unable to claim "additional compensation" for impairment of wage earning capacity after he lost use of his right hand as a result of a work related accident.<sup>9</sup> The Court of Appeals held that the illegal alien could not collect this additional compensation because he would be unable to attend the requisite board approved rehabilitation program due to his status as an illegal immigrant.

Presently, despite some restrictions on receiving full compensation, a worker's status as an illegal alien does not negate an employer's liability under New York Labor Law, nor does the worker's act of tendering false documents to obtain the employment serve as a shield to an employer's liability for lost wages, Workers' Compensation, and even wrongful termination.

With the question of illegal immigration unresolved on the national scale, the New York courts appear to have carved out their own rule. The illegal immigrant worker has virtually full right to recover for lost wages, whether he tendered false documents or not. Thus, in the eyes of the courts, if an alien worker is injured on a job site, he should be given the same remedies available to a legal worker.

1. Federal Immigration Reform and Control Act of 1986, 8 USC §§1324 (a)-(c) (1986).
2. *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U.S. 137, 139 (2002).
3. *Sanango v. 200 East 16th Street Housing Corp.*, 788 N.Y.S.2d 314, 317 (1st Dept. 2004).
4. *Majlinger v. Cassino Contracting Corp.*, 802 N.Y.S.2d 56, 62 (2d Dept. 2005).
5. *Balbuena v. IDR Realty LLC*, 812 N.Y.S.2d 416 (N.Y. 2006).
6. *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 224 (2d Cir. 2006).
7. *Amoah v. Mallah Mgmt, LLC*, 866 N.Y.S.2d 797, 800 (3d Dept. 2008).
8. *Jara v. Strong Steel Doors, Inc.*, 851 N.Y.S.2d 51, 55 (N.Y. Sup. 2007).
9. *Ramroop v. Flexo-Craft Printing Inc.*, 866 N.Y.S.2d 586, 591 (N.Y. 2008).