

Courts mostly ignore immigration status in lawsuits, study says

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(Phys.org)—When a person living in the U.S. without legal permission or suspected of doing so is involved in a work-related lawsuit, most courts disregard their immigration status when determining remedies, says a study from a University of Illinois expert in labor relations.

According to research from Michael LeRoy, a professor of law and of labor and [employment relations](#) at Illinois, by mostly ignoring the [immigration status](#) of workers who file suit against former employers, lower courts are essentially refusing to view the complaint as an occasion to enforce [immigration laws](#).

"In a ruling from 2002, the Supreme [Court](#) invited lower courts to bifurcate remedies, so that unlawful aliens would receive little or no legal protection," LeRoy said. "But for the most part, lower courts have declined to view the filing of a complaint as an occasion to enforce immigration laws. Instead, they have invoked basic remedial principles, such as restitution and prevention of unjust enrichment."

LeRoy compares the actions of the lower courts as similar to honoring the biblical injunction from the Book of Exodus – "One law shall be for the native-born and for the stranger who dwells among you" – of applying laws uniformly to "natives" and "strangers."

"If you substitute 'citizen' for 'native' and 'alien' for 'stranger' – and bear in mind that nearly 11 million people unlawfully reside in the midst of 285 million birthright citizens – well, the conditions may differ in time

and location, but not in the greater context of [inequality](#) between the native and the stranger," he said. "In essence, the lower courts are saying that when we as a nation treat [immigrants](#) who reside unlawfully in their midst as outcasts, we devalue our laws and debase the welfare of our fellow citizens.

"While most lower courts in the study did not delve deeply into the ethical implications of the Supreme Court decision, they did arrive at that moral."

The study, which covers a 10-year period from 2002 to 2012, analyzes federal and state work-related litigation that cites the case *Hoffman Plastic Compounds Inc. v. the National Labor Relations Board*, including those that relied on its precedent or considered remedies involving a known or suspected illegal immigrant.

The research found that depending on the type of complaint, plaintiffs won between 60 and 77.5 percent of the time.

This study also discovered high win-rates for illegal immigrants in Fair Labor Standards Act wage actions, state wage and hour claims, and contract cases, where a successful outcome meant that plaintiffs were awarded monetary damages or were protected from disclosing their immigration status during the litigation, LeRoy says.

"The Fair Labor Standards Act makes it very clear that if you perform the work, you get paid," he said. "And courts have almost universally said, 'We don't care if the devil performed the work.' In other words, the law says that the employer pays no matter what."

In other cases, the courts applied the doctrine of "unclean hands," referring to the unlawful behavior of employers in failing to verify immigration status, or knowingly employing illegal immigrants.

Depending on the law, plaintiffs won between 53.3 and 77.1 percent of those rulings.

Only 5 percent of the rulings mirrored the outcome in the Hoffman Plastic Supreme Court case, where courts found a violation of an employment law but denied a monetary award because of the unlawful status of the plaintiff.

"Knowingly employing illegal aliens creates a cost-free way for employers to create a hazardous workplace where people get injured and the insurance rates don't go up," LeRoy said. "Someone gets injured – you cart them off, turn them over to immigration and report them as deportable aliens, then hire the next batch of illegal aliens and go on from there. This is exactly what a lot of lower courts were worried about – that it enables employers to violate the law without consequences, and thus encouraging more hiring of unlawful aliens. It's also what the four dissenting Supreme Court justices in the Hoffman case were worried about."

Since it's never the same set of circumstance – sometimes, the employer violated immigration law; sometimes, neither the employer nor employee complied with the immigration law; and occasionally, an employee not only lied but stole someone's identity – judicial experience shows that a case-by-case approach is preferable to a one-size-fits-all approach, LeRoy says.

"The more cases you read, the more you're struck by how varied they are," he said.

LeRoy says the database of cases also had individuals who came through a legal method – H1B workers, for example.

"We keep thinking of unlawful aliens as people who illegally cross the

border," he said. "But sometimes, we need guest workers for highly skilled positions in engineering and information technology. And in order to get them here, a labor certification form has to be completed, where the employer essentially says, 'I've looked for a qualified individual in the labor market and can't find them and here's what I'm going to pay this person.'

"But as soon as the worker arrived, the company pulled the rug out from under him and said, 'We're not going to pay you that amount.' So it was that employer that converted a legal relationship into an illegal one, and that's very different from a case where someone buys stolen identification on the black market but then becomes paralyzed at work in an accident."

LeRoy says the best course is to let courts "figure it out for themselves, because the statutes are very different, the circumstances are different, and the level of illegality is very different in each respective case," he said.

This research also is relevant to current proposals for comprehensive reform of immigration laws, LeRoy says.

"The proposal by the 'Gang of Eight' senators is to make for stricter enforcement against employers," he said. "It also seems clear that they're also proposing a worker identification card to be administered by the federal government. So there will be less reliance on birth certificates and driver's licenses, and they're strongly hinting at some sort of work-authorization card issued by the federal government. They haven't said so explicitly, but they've been talking about using technology to make forgery-proof identification."

But if Congress tightens up sanctions, there's going to have to be a very lengthy period where millions of people living in the country without

legal permission will not be deported, LeRoy says.

"They'll be in a state of limbo, and you won't have resolution of this issue," he said. "This will no doubt be part of the details that they'll have to figure out."

Provided by University of Illinois at Urbana-Champaign

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