



California Supreme Court Holds Undocumented Workers are not Barred from All Relief

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In *Salas v. Sierra Chemical Co.* the California Supreme Court recently held that an undocumented worker who fraudulently obtained employment through use of someone else's social security number may seek damages for employment discrimination and retaliation. The Court reasoned that undocumented employees like Mr. Salas are entitled to pursue claims for retaliation and discrimination against their employers because preventing undocumented employees from seeking remedies when they are discharged due to discrimination or because they have applied for workers' compensation would undermine the purpose of federal immigration law by making it less expensive for employers to hire undocumented immigrants than authorized workers, giving employers an incentive to violate federal law. The Supreme Court rejected the employer's arguments that the doctrines of after-acquired evidence and unclean hands barred the employee from any and all relief. The Court held that although these doctrines may operate to reduce an employee's damages and/or preclude reinstatement, they are not a complete bar/defense to an employee's claims. This means that these doctrines do not bar recovery of damages for the period of time prior to the employer's discovery of the information (*after-acquired evidence*). Here, the Court reasoned that an employer's discovery that its employee was undocumented cannot provide a complete bar to a wrongful termination claim because permitting such a defense would eviscerate state law protections against discrimination and retaliation.

The Supreme Court also held that Senate Bill 1818 (SB 1818) (codified as Labor Code section 1171.5; Civil Code section 3339; Government Code section 7286; Health and Safety Code section 24000) which extends state law protections and remedies to all workers regardless of immigration status, is not preempted by the Federal Immigration Reform and Control Act of 1986 (8 U.S.C. §1101 et seq.) (IRCA), except to the extent it authorizes an award of lost pay damages for any period **after** the employer discovers the employee's

inability to work in the United States.**

According to the Supreme Court:

Even if permitting [unauthorized aliens who have used false documents to secure employment] to obtain state remedies for violations of the state labor and employment laws provides an incentive for such federal law violations, the practical effect of such incentive is minimal because the typical unauthorized alien wage earner is not familiar with the state law remedies available for unlawful termination and because job seekers rarely contemplate being terminated in violation of the law. Thus, it is highly unlikely that an unauthorized alien's decision to seek employment in this country would be based in any significant part on the availability of lost wages as a remedy for unlawful discharge. . . . Furthermore, not allowing unauthorized workers to obtain state remedies for unlawful discharge, including prediscovery period lost wages, would effectively immunize employers that, in violation of fundamental state policy, discriminate against their workers on grounds such as disability or race, retaliate against workers who seek compensation for disabling workplace injuries, or fail to pay the wages that state law requires.

**SB 1818 was enacted in 2002 to limit the United States Supreme Court decision in *Hoffman PlasticCompounds, Inc. v. NLRB* which held that the policies underlying the IRCA prohibited the National Labor Relations Board from awarding backpay to illegal immigrants, who, in violation of the National Labor Relations Act, were terminated because of their participation in the organization of a union. Indeed, SB 1818 makes explicit California's public policy with regard to the irrelevance of immigration status in enforcement of state labor and employment laws. If an employer hires an undocumented worker, that employer will bear the burden of complying with all laws related to the actual employment of the employee. Thus, California passed SB 1818 to ensure that undocumented workers remain covered by all the rights and protections given to other workers in California.