

# Workers, Know Your Rights

## Supreme Court Ruling Does Not Strip Undocumented Workers of their Labor Rights

A recent Supreme Court ruling limits the right of undocumented workers to get back pay after being illegally fired for union organizing. Corrupt employers threaten and abuse workers, claiming that workers without legal working papers no longer have labor rights. To fight back, you must know your rights. Workers should strengthen ties with trusted community experts and labor unions to protect themselves from exploitation.

All people working in the United States, whether they have legal working papers or not, have rights guaranteed under the law. Most basic among these rights is the right to organize at work—the right to form a union to fight to make wages, hours, and working conditions better. This right extends equally to documented and undocumented (lacking legal working papers) workers. However, the Supreme Court's ruling draws a new distinction between documented and undocumented workers. According to the Supreme Court, an undocumented worker does not get the same compensation as a documented worker when his or her right to organize is violated.

On March 27, 2002, the U.S. Supreme Court decided a case called *Hoffman Plastic Compounds v NLRB*, the case of Jose Castro, an employee of the company Hoffman Plastic Compounds Inc. and a Latin American immigrant without legal working papers. Hoffman Plastic never had a problem with Mr. Castro's work until he participated in a union organizing campaign. However, once he took part in organizing, the company illegally fired him.

Mr. Castro complained to the National Labor Relations Board (NLRB)—an independent government agency that enforces the National Labor Relations Act, a law governing the relations between unions and employers in the private sector—that he had been fired unjustly. The NLRB found Hoffman Plastic guilty of illegally firing Mr. Castro and awarded him back pay. Back pay meant that Mr. Castro would receive wages for the time when he was not working after he was illegally fired.

Only after the NLRB decided in favor of Mr. Castro did Hoffman Plastic become interested in Mr. Castro's immigration status. Mr. Castro admitted during a hearing that he did not have legal working papers. Hoffman Plastic then claimed that it did not owe Mr. Castro anything because he was undocumented, even though the company admitted that it had fired Mr. Castro illegally. In a decision with important

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consequences for all workers, the Supreme Court ruled in favor of Hoffman Plastic and decided that undocumented immigrant workers cannot receive back pay if they are illegally laid-off.

The Supreme Court's Hoffman Plastic ruling affects undocumented workers nationwide who are currently involved in union organizing, or who have been fired illegally. From now on, no undocumented worker who is illegally fired for union organizing can receive back pay from a court. However, it is important to realize that the Hoffman Plastic decision only affects undocumented workers in a specific situation—it does not apply to most labor rights violations against undocumented workers. Hoffman Plastic does not mean that undocumented immigrant workers no longer have labor rights in the U.S. Undocumented workers, like all workers, have many basic rights that have not changed at all.

While Hoffman Plastic most directly affects immigrant workers without legal working papers, it is important for all workers—whether they are undocumented immigrants, legal immigrants, or U.S. citizens—to understand and be aware of the Hoffman Plastic ruling. Corrupt employers use this decision to exploit undocumented workers and to threaten them if they try to organize. This practice hurts all workers since it increases the incentive both to hire and to abuse undocumented workers, lowering the bar for all workers. Furthermore, when undocumented workers don't participate in organizing, unions lose a large part of their bargaining power and support base.

What labor rights do immigrant workers without legal papers have in the U.S.? Undocumented workers have the right to be paid for all the work they do, no matter whether it's during normal hours or during overtime. Undocumented workers are covered under federal minimum wage and hour laws. Employers cannot pay workers less than minimum wage (\$5.15 per hour) and must pay time and a half ( $\$5.15 + \$2.58 = \$7.73$  per hour) for overtime work, usually anything more than a forty-hour week.

Undocumented immigrants have the right to a safe workplace. They are still covered by federal health and safety protection. They are also entitled to a workplace that is free of discrimination and harassment based on things like race, color, religion, national origin or sex. Furthermore, undocumented workers are still covered by many state labor protections, such as workers' compensation and state wage and hour laws.

So what has Hoffman Plastic changed for undocumented immigrant workers? If it is known to the court that workers are undocumented, they can no longer get the same remedy, back pay, that other workers get if they are fired illegally for union organizing. Nevertheless, undocumented workers should not tolerate employer abuse. Undocumented workers who have not been paid for their work, who have suffered discrimination on the job, or who have been injured on the job are still protected. Undocumented workers must know their rights, and assert their rights to safe, discrimination-free workplaces.

Workers can stay informed by contacting trusted community organizations, labor unions, and other experts in the many issues affecting undocumented workers. Undocumented immigrants must be cautious when discussing their concerns or participating in organizing campaigns. They should take care to keep their immigration status private. They must make sure that unions and community experts take steps to protect them during organizing campaigns and contract negotiations.

Undocumented workers still have rights after Hoffman Plastic. Don't let an unscrupulous employer silence you with intimidation or false information. Workers must know their rights and should not be afraid to demand them. If they act cautiously, undocumented workers can hold employers accountable for their dishonest and illegal practices.

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