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Immigration-Related Documents and Information Not Discoverable in Wage and Hour Lawsuit

Article By
Angel Feng
Mintz
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A ***New York*** federal court recently said that the plaintiff-employees involved in a wage and hour lawsuit are not required to produce their immigration documents and information. The case is important because it limits an employer's ability to defend against such claims based on their workers' potential illegal immigration status.

Background

In *Rosas et al. v. Alice's Tea Cup*, the employer-defendants requested that the plaintiff-employees produce evidence of their immigration status, their work authorization documents, tax returns, and their current employers' identity in connection with their overtime claims under the F*air Labor Standards Act* and the New York Labor Law. They also sought admissions to the workers' use of false or

fictitious Social Security numbers. The plaintiff-employees told the court this information was irrelevant to whether the defendant-employers failed to pay them correctly. The defendant-employers argued that the workers' immigration status and work authorization documents were relevant to a determination of the workers' ability to recover under the FLSA and NYLL, their credibility, and would explain the absence of some payroll records that should have been kept by the employer.

The Decision

U.S. Magistrate Judge Francis concluded that the risk of injury to the workers and the "danger of intimidation" that such request would have on any worker outweighed the probative value of such evidence in showing the plaintiffs' credibility and the absence of payroll records. Most importantly, Judge Francis dismissed the defendant-employers' argument that the workers' immigration status and work authorization were germane to workers' ability to recover under the FLSA and NYLL. Judge Francis held that "Federal courts have made clear that the protections of the FLSA are available to citizens and undocumented workers alike."

What This Means for You

This case underscores that ***all*** workers are protected by the FLSA and NYLL for work performed, whether the workers are authorized to work or not. As a result, any information or request for immigration documents will likely be quashed by the courts (especially in California and New York), as irrelevant and/or undiscoverable.

Moreover, the U.S. Department of Labor and its local counterparts have consistently advised that wage and hour laws apply to all workers without regards to their immigration status. For instance, the respective agencies in New York, California, and the District of Columbia specifically state on their websites that wage and hour laws protect "all workers, even undocumented workers" or "whether or not they are legally authorized to work in the United States." Furthermore, the U.S. Department of Labor affirms the above and specifically addresses the inapplicability of the Immigration Reform and Control Act (IRCA) to wage and hour cases under its jurisdiction.

In addition, employers are reminded that IRCA prohibits: (1) the knowing hiring of persons not authorized to work in the United States; (2) the continued employment of persons not authorized to work (though persons previously employed are not subject to these restrictions); and (3) the hiring of an individual without verifying or correctly documenting the person's identity and eligibility to work legally in the United States (i.e. completing Form I-9).

In sum, a worker's immigration status is not relevant in wage and hour suits and provides no defense in such suits. Employers should also be mindful of complying with IRCA and I-9 rules regarding employment eligibility verification obligations.

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