

**HOFFMAN PLASTIC DECISION:
BAD FOR WORKERS; BAD FOR BUSINESS
NATIONAL IMMIGRATION LAW CENTER**

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On March 27, 2002, the Supreme Court ruled in *Hoffman Plastic Compounds, Inc. v. NLRB*, that undocumented workers who are illegally fired for engaging in union organizing activities are not entitled to receive back pay wages, the only monetary remedy available under the National Labor Relations Act (NLRA). Although the Hoffman decision was limited to undocumented workers' right to back pay under the NLRA, employers immediately attempted to extend the ruling to other employment and labor laws. Employers have argued that undocumented workers should not have a right to minimum wage and overtime protections, such as those afforded by the Fair Labor Standards Act (FLSA). They have raised similar arguments to deny immigrant workers the right to be free from discrimination based on race, national origin, gender (including sexual harassment), religion, and disability provided by Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. Equally troubling, employers have tried to use the judicial process to inquire about plaintiffs' immigration status to intimidate workers into dropping their claims.

The decision created a loophole for companies who hire undocumented workers, allowing them in some cases to evade laws providing for basic worker protections with relative impunity. This behavior puts all workers and law-abiding employers at a disadvantage. If one worker cannot complain about unsafe or abusive working conditions, then all workers' legal recourse is weakened. Employers that obey the law may lose ground to another business that unfairly competes by hiring and exploiting undocumented workers.

- ♦ ***Hoffman Plastic* is bad for all workers...because it undermines labor protections everyone relies on**

The *Hoffman Plastic* decision undermines the rights of all American workers, regardless of immigration status. All labor law enforcement agencies are underfunded and overstretched. The system of worker protection therefore depends on workers' ability to come forward when there is a problem. But a worker is less likely to assert her rights if she thinks she may be fired for doing so. Most workers do not know the immigration status of their coworkers. If one coworker is fired for complaining about a safety hazard and the employer suffers no penalty, other workers are likely to wonder about their own ability to protect their rights. Moreover, if some workers at a worksite do not complain because they are afraid and have fewer rights, then that isolates the remaining few who do complain. Weakened labor standards and lower wages hurt all workers.

- ♦ ***Hoffman Plastic* will exacerbate discrimination against Latinos and Asians**

The *Hoffman Plastic* decision disproportionately affects Latinos, Asians, and others who look or sound "foreign," because it will encourage discrimination, most affecting the industries where they are concentrated. Businesses that seek to take advantage of the *Hoffman Plastic* decision are likely to target workers they suspect are undocumented. Even before the decision, rates of injuries and deaths of Hispanic workers engaged in hazardous employment were extremely high and rising. From the year 1999 to the year 2000, construction fatalities involving Hispanic workers increased by 24 percent, while Hispanic employment was up only 6 percent. In New York, foreign-born workers account for three out of every ten job-related deaths. Poultry workers have an illness and injury rate that is more than twice the national average. The *Hoffman Plastic*

decision may endanger many workers in these industries, who will be unsure about their legal protections should they try to expose unsafe working or other exploitative conditions.

- ♦ ***Hoffman Plastic* hurts law-abiding employers...because it lets scofflaw competitors go unpunished**

Undocumented workers often work at the lowest-paying and most dangerous jobs. Indeed, the *Hoffman* decision will create greater incentive for unprincipled employers to seek out undocumented immigrant workers, because their immigration status can be used to keep them from complaining about workplace conditions. The *Hoffman Plastic* decision rewards this strategy in taking away from regulators an effective tool for enforcing basic workplace laws. This is unfair to the majority of businesses that play by the rules but must still compete with lawbreakers whose hiring practices afford them significant advantages.

- ♦ **Congress must correct the inequities that the Supreme Court's decision in *Hoffman Plastic* has created**

Congress must take action to correct the flaw introduced by the *Hoffman Plastic* decision into the system that enforces labor law. The Supreme Court noted that Congress has the authority to change the law if it believes that holding employers accountable for illegal acts “*helps to deter unlawful activity that both labor laws and immigration laws seek to prevent.*” Congress should exercise that authority to ensure that labor laws apply equally to all workers in the U.S. It should also ensure that remedies for violations of U.S. labor laws focus on the conduct of the employer who violated the law, and not on the status of the victim of that illegal conduct. Unscrupulous employers should not be allowed to shield themselves behind the immigration laws as a means of circumventing their legal responsibilities.