

WORKING IMMIGRANTS

Review of workers compensation coverage of illegal workers

A recent article in the quarterly journal of the International Association of Industrial Accident Boards and Commissions (IAIABC) reviews statutes and court decisions regarding workers comp coverage of undocumented workers. I have placed the entire article below - it is part I; part II is yet to appear. The authors say that 6 states have statutes that expressly authorize coverage for these workers - CA, FL, NV, NY, TX and UT, while two states' laws expressly do not - ID and WY. Twelve states have had court decisions in favor of coverage - IL, MI, MN, ND, OH, AL, AZ, CO, MT, NC, SC and VA. Two of these states - MI and VA - also have court decisions going the other way. Two other states have had court decisions which go against coverage -- KS and PA.

You ought to consider this list giving a rosier picture of coverage than is the case, because some states, notably NY, constrict the benefits of these workers, though not denying them outright.

By Thomas R. Lee and Dennis V. Lloyd

Illegal immigration is a hot-button issue that has spawned a wide range of legal and public policy questions -- including questions regarding workplace injuries involving undocumented workers. The threshold question is eligibility for workers' compensation benefits, which is a matter of state law.

Coverage of Illegal Aliens under Workers' Compensation Statutes in Various States

At least eight states have workers' compensation statutes that expressly address the eligibility of illegal aliens. Six of those states (California, Florida, Nevada, New York, Texas, and Utah) expressly include illegal aliens in their workers' compensation coverage. Two states (Idaho and Wyoming) expressly exclude illegal aliens from workers' compensation coverage. In these states, the courts uniformly hold that illegal workers are covered where they are within the express terms of the statute and not covered where they are not.

A second set of statutes expressly address aliens, but without clear reference to their legal status. In five states (Illinois, Michigan, Minnesota, North Dakota, and Ohio), workers' compensation laws expressly include aliens but make no express reference to their legal or illegal status. The courts in those states have held that these statutes apply to illegal aliens. In several other states (Alabama, Arizona, Colorado, Montana, North Carolina, South Carolina, and Virginia), the legislature extends coverage to "aliens and minors" who are "legally authorized" to work. Even these statutes have been interpreted to apply to both legal and illegal aliens, on the rationale that the "legally authorized" modifier applies only to minors.

The third and largest set of statutes do not address aliens at all. Nineteen states (Alaska, Arkansas, Connecticut, Delaware, Hawaii, Iowa, Kansas, Louisiana, Maine, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, Washington, and Vermont) have very broad definitions of covered workers, largely paralleling the federal definition: "an individual employed by an employer." Five states (Georgia, Indiana, Kentucky, South Dakota, and Wisconsin) use similarly broad language, while expressly including minors. Six other states (Maryland, Mississippi, Missouri, Oregon, Tennessee, and West Virginia) also include minors within their broad definition of covered workers, while specifying that minors are covered regardless of their illegal status. A few courts have found that these sorts of statutes encompass both legal and illegal aliens.

Exclusion of Illegal Aliens on Alternative Statutory Grounds

Even where illegal aliens fall within a broad definition of covered workers, they are sometimes excluded on alternative grounds, such as the absence of an enforceable contract, fraud, or lack of causation.

The seminal case is *Granados v. Windson Development Corp.* (Virginia, 1999, 509 S.E.2d 290). *Granados* held that because illegal aliens "cannot be employed lawfully in the United States," the employment contract was void and *Granados* was therefore not an "employee" for purposes of the Virginia workers' compensation statute. However, the Virginia Legislature subsequently overruled this decision. Several other states have recently declined to follow the *Granados* holding.

In *Doe v. Kansas Department of Human Resources*, the Kansas Supreme Court acknowledged that the illegal alien claimant was "legally entitled to ... benefits" under the Kansas workers' compensation statute, but concluded that her benefits could be suspended on the basis of the "fraudulent and abusive" act she committed when she misrepresented her identity.

The Michigan Court of Appeals reached a similar conclusion in *Sanchez v. Eagle Alloy*.

The Pennsylvania Supreme Court has refused workers' compensation benefits to an undocumented worker on causation grounds. In *Reinforced Earth Co. v. WCAB (Astudillo)*, the court held that while the claimant was entitled to the wage-replacement benefits he received, those benefits could be suspended on the grounds that the claimant's disability was not caused by his workplace injury, but rather by his illegal status. Pennsylvania courts have consistently followed this approach in subsequent cases.

Thomas R. Lee is a professor of law at Brigham Young University and Dennis V. Lloyd is chief legal counsel at the Utah Workers Compensation Fund. This column first appeared in the American Association of State Compensation Insurance Funds quarterly news.

Posted by Peter Rousmaniere on July 19, 2007 3:17 PM |