

## UNDOCUMENTED WORKERS IN THE GEORGIA WORKERS' COMPENSATION SYSTEM

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The topic of illegal aliens in Georgia has received significant attention in Georgia over the last few years. There is no specific Georgia law which addresses this issue. Instead, the Georgia courts have examined this issue in terms of legal precedent in this state, and the impact of federal legislation, including the Federal Immigration Reform and Control Act of 1986 (IRCA). In general, Georgia courts have held that undocumented workers are entitled to workers' compensation benefits after an industrial accident. However, the cases leave open the possibility that ongoing indemnity benefits could be denied if the worker's unemployed status is not due to the injury, but due to his or her "undocumented" status. The following is a summary of the current law impacting Georgia workers' compensation claims.

Under IRCA, it is unlawful for an employer to knowingly employ an undocumented worker who is not authorized to work in the United States. 8 U.S.C. § 1324(a). However, IRCA does not prohibit an undocumented worker from seeking employment, although 8 U.S.C. § 1324(c)(a) makes it a crime for undocumented workers to falsify documents in an effort toward obtaining employment. Over the last decade questions have arisen as to whether an injured undocumented worker should be allowed to receive workers' compensation benefits at all if they could not legally be hired by the employer. As it stands, the courts have ruled undocumented workers are entitled to workers' compensation benefits.

In the early 1990's the Georgia Supreme Court and Court of Appeals addressed a couple of cases involving undocumented workers, but did not provide much direction in determining an illegal alien's entitlement to workers' compensation benefits. In 2002, the United States Supreme Court decided Hoffman Plastics v. Nat'l Labor Relations Board, 535 U.S. 137, 122 S.Ct. 1275 (2002). In examining an undocumented worker's claim for back pay, the Supreme Court held the National Labor Relations Board's (NLRB) award of benefits to the worker violated federal law as the worker admitted presenting fraudulent documents to the employer when applying for his job. The Supreme Court noted that to uphold the administrative law judge ruling awarding back pay to the undocumented worker would equate to affirming years of work and wages unlawfully earned because of a criminal act. While employers and insurers in Georgia tried to make the analogy that workers' compensation benefits are like "back pay" in Hoffman Plastics, the Georgia Court of Appeals disagreed.

In Wetwalls, Inc. v. Ledezma, 266 Ga. App. 685, 598 S.E.2d 60 (2004) the Georgia Court of Appeals addressed this issue more directly. The undocumented claimant was injured at work and the employer/insurer commenced payment of income benefits. They suspended those benefits when he was incarcerated and subsequently deported from the United States, then banned from returning. The Court of Appeals held federal law did not pre-empt the awarding of workers' compensation benefits in Georgia and because the claimant remained paralyzed and totally disabled, he was entitled to a resumption of TTD benefits despite his deportation. A few months later, the Court of Appeals examined the issue again and reached the same conclusion as in Wetwalls: there is no express pre-emption of federal law or directly conflicting law that would preclude Georgia from awarding workers' compensation benefits to undocumented workers, stating nothing in IRCA suggested this either. Continental Pet Technologies, Inc. v. Palacias, 269 Ga. App. 561, 604 S.E.2d 627 (2004).

In spite of the Georgia Courts holding that undocumented workers could receive workers' compensation benefits, two subsequent decisions by the Court of Appeals clarified earlier rulings. In Earth First Grading v. Gutierrez, 270 Ga.App. 328 (2004) an illegal alien provided false documents to his employer to obtain employment. Upon injuring his back at work, the claim was accepted and he received income and medical benefits. Despite a full duty work release several months later, the physician later

assigned work restrictions because of the injury and the claimant requested a hearing seeking a reinstatement of TTD benefits. During the discovery process, the employer/insurer learned of his illegal immigration status and he admitted under oath: his employment application documents were false, he was an illegal alien and he fraudulently submitted those documents to obtain employment.

The employer/insurer made a number of arguments as to why he should not receive benefits, including the pre-emption argument used in the Hoffman, Wetwalls, and Palacias cases. The Court of Appeals again rejected these arguments. The employer/insurer also argued that because the employment application documents were false, there was never any employment “contract” formed so the claimant was technically not “an employee” under the Georgia Workers’ Compensation Act. The Court also rejected this argument. The employer/insurer also argued the claimant committed willful misconduct in providing fraudulent documents, however, the Court found the analysis was misplaced and there was no causal connection between the false documents and the subsequent work injury.

Finally, the employer/insurer argued the claimant was not entitled to a reinstatement of benefits because they could not knowingly offer a job to an admitted illegal alien, and he could not accept a job even if it was offered. The Court rejected this argument because the employer/insurer did not find out about the claimant’s light duty work status until litigation ensued. However, the decision left open the possibility benefits to an injured undocumented worker if the employer made suitable light duty work available but could not offer a job because of the illegal alien issue.

In 2006 the Georgia Court of Appeals had the opportunity to address this issue in of Martines v. Worley & Sons Const., 278 Ga. App. 26 (2006). There, the undocumented worker was injured at work and received income and medical benefits. The treating physician released him to light duty work and the employer offered him a position as a delivery truck driver. The claimant agreed to accept the job, but when reporting for the assignment he could not produce a valid Georgia driver’s license or any documentation showing he could legally work in the United States. A hearing was requested and there were varying degrees of analysis by the courts as to whether the light duty job was “suitable” and if the claimant’s refusal of the job was “justified.”

The Court of Appeals examined case law addressing light duty situations, noting the employer must first offer suitable employment before examining whether the injured worker made a justified refusal of such employment to warrant ongoing income benefits. The Court agreed the job offered to Martines was suitable to his physical capacity, so it was not a question of whether he was able to perform the light duty job of driving a delivery car, but rather his inability to acquire a Georgia driver’s license and accept that job due to his illegal status. Looking to the Gutierrez case, the Court agreed with the employer/insurer’s analogy to an incarcerated person who could not meaningfully accept any offer of employment while incarcerated. The Court concluded it was Martines’ illegal immigration status which caused his inability to accept the proffered employment, not his physical status as related to the work injury. Thus, he was not entitled to receive ongoing benefits.

From this body of case law, a couple of conclusions can be drawn about undocumented workers in Georgia. While an undocumented worker may be entitled to workers’ compensation benefits like any other injured worker, the right to continue receiving income benefits is not without limits. Employers and insurers should make a light duty job offer under O.C.G.A. § 34-9-240 contingent on the claimant bringing “documents which prove he can work legally in this country.” See, Martines. If he shows up and is unable to provide the required documentation, the employer/insurer would argue an unjustifiable refusal of suitable light duty employment - not because of his work injury or restrictions, but because of his undocumented status. As the law stands, this would provide a mechanism for suspending benefits under the Act.