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This table of authorities is meant to serve as a helpful tool for litigators facing immigration-related issues in their labor or employment cases. This is by no means an exhaustive list, but we will make every effort to continually update it.

Federal Cases

Ansoumana v. Gristede's Oper. Corp., (S.D.N.Y. Nov. 8, 2000) No. 00 Civ. 0253 (AKH) (District judge disallowed deposition questions about plaintiffs' immigration status, and rejected the defendants' argument that the immigration status of the various named plaintiffs would affect their credibility and ability to represent the class);

Baker v. IBP, Inc., 357 F.3d 685 (7th Cir. 2004) (Affirming dismissal of RICO suit brought by authorized workers because plaintiffs are unionized and the complaint at its core is about the adequacy of their wages -- an issue of mandatory negotiations between employer and the union. Court also Ninth Circuit's reasoning in *Mendoza v. Zirkle Fruit Co.*);

Commercial Cleaning Services, LLC v. Colin Service Systems, Inc., 271 F.3d 374 (2d Cir. 2002) (Court found plaintiff small business stated a RICO claim when it alleged that defendant secured anticompetitive advantage by hiring knowingly hiring undocumented employees);

Contreras v. Corinthian Vigor Ins. Brokerage, Inc., 25 F.Supp.2d 1053 (N.D. Cal. 1998) (Finding employer liable under anti-retaliation provision of the FLSA when it report undocumented worker to the INS);

De La Rosa v. Northern Harvest Furniture, 210 F.R.D. 237 (C.D. Ill. 2002) (Distinguishing *Hoffman* as to the relevance of the plaintiffs' immigration status in Title VII case citing difference between "the authority of a federal court as opposed to the NLRB");

Does I Thru XXIII v. Advanced Textile Corporation, 214 F.3d 1058 (9th Cir. 2000) (Noting that "complaining employees are more effectively protected from retaliation by concealing their identities than by relying on the deterrent effect of *post hoc* remedies");

Dodge v. Hunt Petroleum Corp., 1998 U.S. Dist. LEXIS 9963 (N.D. Tex. 1998) (Finding that broad scope of defendant's efforts to discover after-acquired evidence may support inference of retaliatory purpose);

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EEOC v. Hacienda Hotel, 881 F.2d 1504 (9th Cir. 1989)

(Pre-IRCA case extending Title VII to undocumented employees);

EEOC v. Tortilleria “La Mejor,” 758 F.Supp. 585 (E.D. Cal. 1991)

(Post-IRCA case extending Title VII to undocumented employees);

EEOC v. Switching Systems Division of Rockwell Intl. Corp.,

783 F.Supp. 369 (N.D. Ill. 1992)

(Post-IRCA case extending Title VII to undocumented employees);

Egbuna v. Time Life Libraries, Inc., 153 F.3d 184, 187 (4th Cir. 1998), *en banc*

(per curiam), *cert. denied*, 525 U.S. 1142 (1999)

(Holding unauthorized workers are not protected by Title VII against employment discrimination in the hiring stage);

Escobar v. Spartan Security Service, 281 F. Supp. 2d 895 (S.D. Tex. 2003)

(Ruling that worker was barred from receiving back pay as a remedy for having been fired unlawfully under FLSA, but not foreclosed from pursuing other remedies, including reinstatement and front pay where worker was now authorized to work);

Flores v. Albertson’s, Inc., 2002 U.S. Dist. LEXIS 6171, 2002 WL 1163623 (C.D. Cal. 2002)

(Rejecting the employers’ efforts to inquire into plaintiffs’ immigration status, recognizing the serious chilling effect such discovery would have on plaintiffs and immigrant workers generally);

Flores v. Amigon, 233 F.Supp.2d 462 (E.D.N.Y. 2002)

(Granting protective order against discovery of immigration status information, and noting that “*even if it were* [relevant], the potential for prejudice far outweighs whatever minimal probative value such information would have”);

Hagl v. Jacob Sterns & Sons, Inc., 396 F.Supp. 779 (E.D. Pa. 1979)

(Finding that lack of immigration status is irrelevant to liability and allowing the introduction of such evidence to calculate lost earnings only after liability was been established);

Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002)

(Relying on “changed landscape” in immigration law since IRCA was enacted to hold that NLRB did not have authority to award back pay for undocumented workers under the NLRA since);

In re Reyes, 814 F.2d 168 (5th Cir. 1987) *cert. denied sub nom. Griffin & Brand of McAllen v Reyes*, 487 U.S. 1235 (1988)

(Denying discovery into plaintiffs’ immigration status, noting that such discovery could inhibit their pursuit of their legal rights “because of possible collateral wholly

unrelated consequences, [and] because of embarrassment and inquiry into their private lives”);

Liu v. Donna Karan Intl., Inc., 207 F.Supp.2d 191 (S.D.N.Y. 2002)
(Denying discovery into plaintiffs’ immigration status of plaintiffs in a FLSA unpaid wages case, noting that the risk that it would result in intimidation and possibly destroy the underlying claims outweighed the defendants’ need for the disclosure of such information);

Lopez v. Superflex, Ltd., 2002 U.S. Dist. LEXIS 15538 (S.D.N.Y. Aug. 21, 2002)
(Ruling that a worker was not required to state in his complaint that he is authorized to work in order to bring a claim under the ADA. While the court refused to address whether undocumented workers have standing to bring claims under the ADA after *Hoffman*, it cautioned that plaintiff might lack standing if undocumented);

Mendoza et al., v. Zirkle Fruit Co., et al., 301 F. 3d 1163 (9th Cir. 2002)
(Allowing work-authorized employees to proceed with RICO claim against their agricultural employers where workers alleged that the growers depressed their wages by conspiring to hire undocumented workers at below-market wages through an “illegal immigrant hiring scheme”);

Miller v. AT&T, 83 F.Supp.2d 700 (S.D.W.V. 2000)
(Stating that the after-acquired evidence doctrine “is not intended to be used as a fishing expedition by employers to find wrongful conduct on the part of their terminated employees for the purpose of limiting their damages”);

Montelongo v. Meese, 803 F.2d 1341 (5th Cir. 1986)
(Barring inquiries into class members’ immigration status);

NLRB v. A.P.R.A. Fuel Oil Buyers Group, Inc., 134 F.3d 50 (2d Cir. 1997)
(Ordering reinstatement of a worker conditioned upon his ability to satisfy the I-9 process within a “reasonable period of time” where employer had hired the worker knowing he was undocumented);

NLRB v. Kolkka, 170 F.3d 937 (9th Cir. 1999)
(Ruling that an employer may not refuse to bargain with a union because some of the voting employees were undocumented aliens);

Patel v. Quality Inn South, 846 F.2d 700 (11th Cir. 1988)
(Holding undocumented employees are covered by FLSA);

Renteria, et al. v. Italia Foods, Inc., et al., 279 F. Supp. 2d 235 (N.D. Ill. 2003)
(Ruling undocumented workers entitled to damages for retaliatory termination under FLSA, but not to back pay or front pay);

Reyes-Gaona v. North Carolina Growers' Assn., et al., 250 F.3d 861; (4th Cir. 2001)
(Holding that the Age Discrimination in Employment Act of 1967 (ADEA) does not protect non-U.S. citizens who are discriminated against in a foreign country by a U.S. employer);

Rios v. Enterprise Assn. Steamfitters Local 638, 869 F.2d F.Supp 585 (E.D. Cal 1991)
(Pre-IRCA case extending Title VII to undocumented employees);

Rivera et al. v. NIBCO, Inc., 204 F.R.D. 647 (E.D. Cal. 2001)
(Granting protective order limiting the scope of inquiry into plaintiffs' immigration status because drastic consequences and intimidating impact of such discovery);

Rivera et al. v. NIBCO, Inc., 2004 U.S. App. LEXIS 7119 (9th Cir. Apr. 13, 2004)
(Affirming protective order and rejecting defendants' argument that the "after acquired evidence" doctrine required approval of its discovery request, due both to the substantial chilling effect of disclosure, and because, in the immigration context, such a holding would reinforce the "perverse incentives" of employers to ignore immigration laws at the time of hiring but insist upon immigration enforcement when employees complain);

Rodriguez v. The Texan, Inc., 2002 U.S. Dist. LEXIS 17379 (N.D. Ill. 2002) _
(Court granted plaintiffs' *motion in limine* to prohibit the defendants from introducing evidence regarding the plaintiffs' immigration status or their inability to mitigate damages because defendants failed to raise it as affirmative defense);

Romero v. Boyd Bros. Transp. Co., Inc., 1994 U.S. Dist. LEXIS 8609 (W.D. Va. 1994)
(Excluding evidence of plaintiff's immigration status finding its probative value was far outweighed by potential of prejudice before a jury);

Singh v. Jutla, 214 F.Supp.2d 1056 (N.D. Cal. 2002)
(Denying motion to dismiss and finding that undocumented employees continue being protected by the FLSA and its anti-retaliation provision despite *Hoffman* decision; jury subsequently awarded plaintiff \$200,000 in compensatory and punitive damages for harm suffered when employer reported plaintiff to immigration);

Topo v. Dhir, 210 F.R.D. 76 (S.D.N.Y. 2002)
(Granting protecting order and refusing defendant's request to conduct discovery into plaintiff's immigration status in case involving allegations of illegal trafficking in persons and involuntary servitude);

NLRB Cases

County Window Cleaning, 328 NLRB No. 26 (April 30, 1999)

(Finding employer's conduct to be unlawful where employer who knew that employee had been working for 5 years with invalid social security number requested that employee provide "real" security number only after employee expressed support for the Union);

Del Rey Tortilleria, Inc., 272 NLRB 1106 (1984) enf'd 787 F.2d 1118 (7th Cir. 1986)

(Finding employer's conduct to be unlawful where two days after representation election, employer required workers to produce social security cards and "green cards" to receive their pay checks);

Double D Construction Group, Inc., 339 NLRB No.8, (June 17, 2003)

(Finding ALJ's decision to discredit worker's testimony solely because he testified to presenting a false SSN to obtain employment was erroneous, and noting that such a determination would essentially deny the protections of the NLRA to anyone who had made false statements regarding his SSN or immigration status);

Domsey Trading Corp., 310 NLRB 777 (1993)

(Finding employer's conduct to be unlawful where employer required reinstated strikers to provide proof of work authorization);

ImpressiveTextiles, Inc., 317 NLRB No. 2 (1995)

(Finding employer's conduct to be unlawful where employer asked for immigration documents upon recall).

John Dory Boat Works, Inc., 229 NLRB 844 (1977)

(Finding employer's conduct to be unlawful where employer subpoenaed employees' passports, "green cards" and work authorization cards);

Met Food, 337 NLRB No. 14 (December 20, 2001)

(Finding employer's conduct to be unlawful where employer requested proof of work authorization in offer of reinstatement);

Nortech Waste, 336 NLRB No. 79 (September 28, 2001)

(Finding employer's conduct to be unlawful where employer began unprecedented review of I-9s following representation election);

Regal Recycling, 329 NLRB No. 38 (Sept. 30, 1999)

(Finding employer's conduct to be unlawful where employer asked select workers to produce proof of immigration status during organizing campaign);

Superior Truss & Panel, Inc., 334 NLRB No. 115 (Aug. 2, 2001)

(Certifying union despite immigration-related objections by employer and finding employer's evidence of receipt of SSA no-match letters unsubstantial to establish the workers were indeed undocumented);

Tuv Taam, Inc., 340 NLRB No. 86 (Sept. 30, 2003).

(Holding that Board is not foreclosed by *Hoffman* from awarding back pay employer's bare assertion that the discriminatees are undocumented, where employer based its allegations that the workers were undocumented on a "no-match letter." Importantly, the NLRB held that in this case, the employees' immigration status "does not bear on whether the [employer] engaged in the unlawful conduct, . . . nor does it bear on the remedy to be ordered at this state of the proceedings for the unlawful conduct found." Board also found that SSA no-match letter is not "legally cognizable evidence" of workers' immigration status.);

Labor Arbitration Cases

AmeriPride Linen & Apparel Services, FMCS Case No. 021120-01435-3 (Apr. 4, 2002)

(Arbitrator ordered the employer to reinstate the two workers with back pay finding that two workers were terminated without just cause when they came forward to correct their employment records after providing false documents at the time of hire. Arbitrator found there was credible evidence establishing that AmeriPride "did not consistently apply its 'dishonesty' rule to cases involving employees that submitted new social security cards to replace social security cards submitted at the time of hire.");

Gila's Jewel, Inc., AAA Case No. 13-300-02261-01 (Jay Nadelbach, (Feb. 19, 2002)

(Holding there is no "just cause" to fire an employee who fails to respond to a "no-match" letter);

San Francisco Cent. Travelodge Joint Venture, AAA Case No. 74-300-63-99

(Luella Nelson, May 3, 2000)

(Holding there is no "just cause" to fire an employee who fails to respond to a "no-match" letter);

Office of Chief Administrative Hearing Officer (OCAHO)¹ cases

Diarrassouba v. Medallion Financial Corp., OCAHO Case No. 01B00027

(Holding that an indirect victim or witness to retaliatory conduct under section 8 U.S.C. § 1324b(a)(5) has standing, and that the anti-retaliation provision must be

¹ OCAHO has jurisdiction to hear allegations of violations of the employer sanctions and anti-discrimination provisions related to the I-9 process. Appeals of these ALJ decisions are filed with the federal court.

broadly construed to further the underlying purpose of the statute citing to Title VII's broad construction of the anti-retaliation provisions);

United States v. Padnos Iron & Metal Co., 3 OCAHO 414
(Finding document abuse committed during reverification process, and rejecting respondent's defense of good faith compliance with statute);

United States v. Townsend Culinary,
8 OCAHO 1032 (1999), 1999 WL 1295029.....20
(Finding document abuse during reverification);