



# California Law Update

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## NATIONAL BATTLE OVER ALLEGED UNDOCUMENTED WORKERS PLAYS OUT IN CALIFORNIA

### Introduction

The question of how to deal with labor issues relating to undocumented aliens is one of the most controversial issues of our time. The United States is a nation of immigrants and has a long history of protecting workers from exploitation. There is great outrage when we learn of a company that gets the benefit of hard work but seeks to avoid paying the worker because of a claim that the employee lacks proper documentation. On the other hand, there is a growing concern that the increase in undocumented workers has caused a great strain on government, education and health-related services. Coupled with a renewed emphasis on national security, the subjects of citizenship and proper worker visas can invoke strong emotions.

The intersection of all these competing issues can be observed in the hallways at the Woodfin Hotel in Emeryville, California. It may be surprising to find out that some of this country's most important issues on immigration policy may emerge out of a small class-action lawsuit. Before addressing the key disputes at play in the Magana v. Woodfin Suite Hotels, LLC case, it is important to address two decades of legislation and case development that lead to this point.

### Background of 1986 Immigration Reform and Control Act

Under the Immigration Reform and Control Act of 1986 (IRCA), undocumented workers that submit false documents to obtain employment are barred from recovering lost wages under the Fair Labor Standards Act (FLSA). 8 USC section 1101, etc.; Hoffman Plastic Compounds, Inc. v. NLRB, 525 U.S. 137 (2002). IRCA delicately balances which serves the goal of preventing unauthorized alien employment, while avoiding discrimination against citizens and authorized aliens. Collins Foods International, Inc. v. U.S. INS, 948 F. 2d 549, 554-555 (9th Cir. 1991). IRCA imposes civil penalties on employers that knowingly hire an unauthorized alien to work in the United States. 8 USC section 1324(a)(1)(A).

The competing policies of IRCA set up a tension which is one of the most hotly debated issues of our time. Employers are required to comply with IRCA'S provisions while needing to take steps to ensure that they are not accused of discrimination in failing to hire people from certain ethnic groups. Additionally, employers need to be mindful of retaliation claims and unfair business practices claims under both federal and state laws. Such claims are brought based on allegations that (1) undocumented workers were purposely hired and paid low wages in an effort to exploit their status as undocumented workers and/or (2) the employer's unwritten policy is to terminate any undocumented worker who asserts their legal rights.

## **California Preemption Issues**

In California, efforts to use IRCA to defeat the claims of undocumented workers, have proved unsuccessful. California state and federal courts consistently refuse to apply the Hoffman Plastic rationale to prevent undocumented workers from recovering on wage claims. In Flores v. Albertson's, Inc., U.S. Dist. LEXIS 6171 (C.D. Cal. 2002), the United States District Court for the Central District of California rejected the supermarket's claim that IRCA prevented undocumented workers from recovering. According to the Court, the strong public policy for workers who are individuals who actually performed work be paid regardless of their documented status.

That same year this position was also taken by the United States District Court for the Northern District of California in Singh v. Jutla & CD & R Oil, Inc., 214 F. 2d 1056 (N.D. Cal. 2002), when the court ruled in favor of a plaintiff who filed claims under the anti-retaliation provisions of both the FLSA and the California Labor Code. The court, citing both Flores and Hoffman Plastic, rejected defendants' arguments that Hoffman Plastic eliminated the possibility of an undocumented plaintiff obtaining an award of unpaid wages. Singh, in construing Hoffman Plastic, merely stated that Hoffman Plastic eliminated back pay as a remedy available to those undocumented workers who were proven to have submitted false documentation. The holding of Singh is very specific, in that only illegal aliens who are been proven to have submitted false documentation are denied a remedy of payment of back or lost wages.

In March, 2007, the California Court of Appeal again addressed this issue in Reyes v. Van Elk Ltd., Cal App. LEXIS 353 (2007). In Reyes, the Court of Appeal rejected the employer's defense that the claim of an alleged undocumented worker under California's prevailing wage law was barred and pre-empted by IRCA. Reyes noted that IRCA addresses a very specific situation where false documents were submitted by an undocumented worker. The Court of Appeal rejected the claim that Hoffman Plastic and/or the IRCA bars the Reyes claim and stated that the California legislation providing for payment of prevailing wages comes under the historic police powers of the state, and it is therefore presumptive that the IRCA cannot supersede those police powers. The Court of Appeal noted that the defendant did not cite any provisions of the IRCA that pre-empted state wage and hour legislation, and therefore found the IRCA irrelevant to the wage claims asserted by plaintiffs. The Court of Appeal distinguishes Reyes from Hoffman Plastic, and noted that to allow employers to hire undocumented workers and pay them less than the prevailing wage would subvert IRCA by condoning and encouraging future violations by employers.

## **Ongoing Saga Of The Woodfin Hotel**

It is with this backdrop that the current battle at the Woodfin Hotel in the San Francisco Bay Area is playing itself out. In 2006, the City of Emeryville (located just outside of San Francisco) passed Measure C, which imposed certain regulations at large hotels and set minimum average standards for compensation and for workload. A key feature of Measure C was that minimum compensation for each employee shall be set at at least \$9.00 per hour, and that minimum average compensation of all employees in the hotel be set at at least \$11.00 per hour. The ordinance also provided that employees working as room cleaners shall be paid at least time-and-a-half the minimum average compensation if required to clean rooms amounting to more than 5,000 square feet of floor space in an eight-hour workday. This meant that the average compensation for room cleaners amounted to \$13.50 per hour.

Several months after Measure C was passed, numerous room cleaners filed a class action lawsuit

entitled Magana v. Woodfin Suite Hotels, LLC, Alameda County Superior Court Case No. RG06291309, which sought to enforce the ordinance. The lawsuit was amended shortly thereafter when the plaintiffs alleged that the hotel improperly engaged in unfair business practices and unfair labor practices by retaliating against its room cleaner employees. The amended complaint alleged that the Woodfin Hotel adopted a practice of sending room cleaners home early if one of the customers in a room initially assigned to the room cleaner changed plans and was no longer checking out that day. The amended complaint asserted that prior to August, 2006, the hotel's practice was not to send such room cleaners home early but instead to assign them other rooms.

The class-action lawsuit asserted that the new policy was explained by Woodfin Management to the room cleaners as resulting from Measure C. These policies were allegedly put into place by the Woodfin Hotel after the hotel circulated letters requiring each room cleaner to fill out a new federal I-9 form because the hotel was informed by the Social Security Administration that the names and Social Security numbers provided when these individuals were hired do not match the Social Security Administration's records. The class-action lawsuit alleged that the Woodfin Hotel employed these workers for years without ever being interested in the accuracy of their Social Security numbers, and only expressed such concern after Measure C was passed and they were faced with a situation where they would have to pay these workers more money.

The Woodfin Hotel, citing IRCA's civil penalty measures making it illegal for employers to keep undocumented workers on staff, sought to fire the room cleaners when they would not provide new documentation to confirm the accuracy of their Social Security numbers.

On January 23, 2007, Judge Bonnie Sabraw of the Alameda County Superior Court granted a preliminary injunction and issued a restraining order preventing the Woodfin Hotel from firing these room cleaners until the City of Emeryville completed its investigation into allegations of retaliation. In applying the typical tests for such injunctive relief, the court found that in balancing plaintiffs' possibility of success on the merits, the prejudice to Emeryville and the lack of prejudice to the Woodfin, Judge Sabraw concluded that the granting of the motion for preliminary injunction was proper, and put the temporary restraining order in place through April 20, 2007. Judge Sabraw's order, however, was based on the request for the City of Emeryville to allow completion of its investigation, which was expected to be finished on April 20, 2007. Judge Sabraw directed the plaintiffs to file a new motion for preliminary injunction if they seek to extend the temporary restraining order beyond the expiration of the preliminary injunction on April 20, 2007.

Given the national policy implications invoked by the competing interests of IRCA, this is an important case to watch. Given that wage and overtime law is one of the most volatile areas of unfair business practices and labor law claims, we will continue to monitor the developments of this case and provide updates.

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