

PUBLICATION

U.S. Supreme Court: No NLRB Backpay for Undocumented Aliens

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March 27, 2002

In a decision rendered today, the U.S. Supreme Court overruled the National Labor Relations Board and held that backpay or reinstatement may not be ordered against an employer in favor of an alien worker who is either not lawfully present in the U.S. or not authorized for employment. The remedy had been awarded because the employer was found to have laid off the worker in retaliation for supporting a union organizing campaign at the employer's plant. While other general remedies such as "cease and desist" orders and requirements to post notices at the work place still may be imposed, the ruling will tend to reduce the risk an employer faces in taking adverse action against an unauthorized alien worker when labor union activity is at issue.

The Supreme Court's rationale – that Congress' policy against illegal immigration and unauthorized work by aliens trumps general remedies in a federal statute protecting collective bargaining rights – could apply to other workplace rights as well. In particular, the Court's decision could be interpreted to prohibit backpay and reinstatement (including "front pay" awards substituting for reinstatement) when unauthorized aliens complain about civil rights violations, including Title VII. Conceivably state courts could follow the decision in prohibiting workers compensation awards, but we find that unlikely. Unemployment compensation already is unavailable to unauthorized alien workers.

The case is [HOFFMAN PLASTIC COMPOUNDS, INC. V. NLRB](#) (00-1595), decided March 27, 2002.

How We Can Help

The Immigration Team of Baker Donelson advises clients in relation to immigration-related workplace laws on the federal level, and in relation to state law issues involving states in which attorneys in our firm are licensed to practice law. We represent employers in defending charges of immigration related employment practices. We have lawyers with former NLRB experience who represent employers in relation to union matters. Our Labor & Employment Law Group represents employers in a wide range of workplace issues.