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Intersection of employment law and immigration

CALIFORNIA EMPLOYMENT PROTECTIONS ARE FOR ALL WORKERS – EXPLOITATION COMES IN MANY FORMS



Immigration and employment law often intersect in hiring practices and workplace rights. In the wake of the ICE raids, these issues are more prominent with employees facing increased risk of exploitation due to immigration status. Undocumented workers are vulnerable to wage theft and unsafe working conditions and often, are afraid of speaking up in fear of deportation. In this climate, employers may use threats of reporting immigration status to authorities to intimidate and silence workers, leaving workers feeling compelled to accept working conditions that are illegal due to one's immigration status.

Protections for all workers

California protects all employees regardless of immigration status. Civil Code section 3339 ensures that all California employment, labor, housing and civil rights protections apply to individuals regardless of their immigration status. Immigration status is irrelevant to

liability and California law prohibits inquiry into status with limited exceptions (necessary for federal law compliance). Below is a breakdown of those important protections:

Labor Code § 1171.5

Immigrant workers often are the most vulnerable and exploited when it comes to wages, meal-and-rest break violations and minimum-wage requirements. Labor Code section 1171.5 explicitly provides that all the protections, rights, and remedies under California labor laws applies to all workers regardless of immigration status. This means undocumented workers can pursue wage claims, workers' compensation claims, FEHA discrimination and harassment claims just like any other employee. Federal law aligns with California covering undocumented workers in most respects.

Labor Code §§ 1019 & 244 – Employer retaliation and immigration-related threats

Labor Code section 1019 prohibits employers from unfair immigration practices (threatening to report a worker's immigration status or that of the worker's family) in retaliation for exercising any workplace right. Examples of workplace rights that are exercised are: (1) filing a complaint or informing your employer of the other party's alleged violation of a code or ordinance so long as it is done in good faith, (2) seeking information to confirm an employer is in compliance with a labor code or local ordinance, and (3) informing your employer of your rights under the labor code.

Section 1019 defines "unfair immigration-related practice" as: (1) requesting more or different documents than what is required under federal law or refusing to honor documents tendered pursuant to federal law when, on their face, they reasonably appear to be genuine, (2) using an E-verify system to check the employment authorization status of a person in a manner not required by

federal law, (3) threatening to do a false complaint with a state or federal agency and (4) threatening to call immigration authorities.

Labor Code section 244 similarly prohibits unfair immigration-related practices in the employment context. If the employer has made threats to report the client to ICE or has actually done so in retaliation for asserting workplace rights, that's an independent cause of action and potentially supports punitive damages under Civil Code section 3294.

California Assembly Bill 263 (2013) and subsequent legislation strengthened these protections significantly. An employer who retaliates by contacting or threatening to contact immigration authorities faces civil penalties and potential suspension of business licenses under Labor Code section 1019.1. Additionally, Labor Code section 1019.2 restricts employers from demanding specific documents beyond what the I-9 form requires, re-verifying employment eligibility in a discriminatory manner, or using E-Verify selectively (i.e., only against workers of a certain national origin).

The Immigrant Worker Protection Act and limits

California Assembly Bill 450 (2017) known as the Immigrant Worker Protection Act restricts public and private employers from voluntarily allowing immigration agents (ICE) into nonpublic work areas. Employers generally cannot allow ICE agents into nonpublic areas without a judicial warrant and must notify employees within 72 hours of receiving a Notice of Inspection of I-9 records. Similarly, employers cannot give consent to federal agents to access, review, or obtain employee records, unless authorized by a judicial warrant or subpoena.

Wage claims

Undocumented workers in California are entitled to the same minimum wage,

overtime, and meal/rest break protections as authorized workers and they can file wage claims without fear of deportation. As highlighted above, undocumented employees are protected like any other employee. In the wake of the ICE raids, the California Labor Commissioner in June of 2025 issued a news release reminding all workers of their legal rights under the Labor Code.

Fair Employment and Housing Act (FEHA) protection for undocumented workers

In California, most employment protections are extended to all workers regardless of immigration status including antidiscrimination laws. The protections under FEHA ensure that there is no discrimination in business practices including the following: (1) advertisements, (2) applications, screening and interviews, (3) hiring, transferring, promoting, terminating or separating employees and (4) working conditions including compensation.

The most common practice against immigrant workers is discrimination based on race and and/or national origin. Government Code section 12940, subdivision (a) is the primary vehicle for an undocumented worker who is targeted because of where he or she is from or perceived to be from.

Common examples of discrimination based on national origin happen because of a person's place of birth, discrimination based on accent or employers having only English-speaking rules in the workplace. Similarly, in addition to being discriminated against, an undocumented worker may be harassed. Under Government Code section 12940, subdivision (j), what may qualify as harassment based on national origin are: derogatory comments about immigration status, threats of deportation, mockery of accent, ethnic slurs and hostile conduct that is tied to status.

Retaliation claims are frequently the

strongest and overlap with discrimination and harassment. Under Government Code section 12940, subdivision (h) protected activities trigger retaliation under FEHA. Therefore, if an employer is threatening to report the worker to immigration authorities, in addition to bringing claims under Labor Code section 1019, an employee may also bring a claim under FEHA.

Other issues to be aware of when representing undocumented workers

Damages – Limiting lost pay for period after employer discovers ineligibility to work

In *Salas v. Sierra Chemical Co.*, (2014) 59 Cal.4th 407, Plaintiff sued under FEHA, alleging disability discrimination, failure to accommodate and retaliation for filing a workers' compensation claim. During litigation it was discovered that Plaintiff had used another person's Social Security number to obtain employment and Defendant moved for summary judgment, arguing on the grounds that the after-acquired evidence doctrine and the doctrine of unclean hands completely barred Plaintiff's claims.

The court in *Salas* settled the question of whether the doctrine of unclean hands and after-acquired-evidence, which focus on employee misconduct to limit relief, stood as a complete bar to relief for undocumented workers.

The trial court granted summary judgment and the Court of Appeal affirmed, but the California Supreme Court reversed and held that: (1) after-acquired evidence of an employee's fraudulent use of another person's Social Security number does not completely bar a FEHA disability discrimination claim, but instead limits available remedies; (2) the doctrine of unclean hands based on an employee's undocumented immigration status is not a complete defense to a FEHA claim.

Another important part of the Supreme Court's holding was that Califor-

nia's Senate Bill 1818 (codified in Civil Code § 3339) extends all state employment law protections "regardless of immigration status"; however, it was partially preempted by the federal Immigration Reform and Control Act (IRCA), but only to the extent it authorizes lost-pay awards for the period after the employer discovers the employee's work ineligibility.

The court held that to the extent FEHA allows recovery of back pay for the period *after* the employer discovers a former employee's undocumented status, that portion of California's law conflicts with the IRCA's provision against continuing to employ workers whom the employer knows to be undocumented, and thus is preempted by federal law.

But IRCA does not prohibit an employer from paying, or an employee from receiving wages already earned; so, allowing recovery of lost wages in the period before the employer discovers the worker's undocumented status does not produce an "inevitable collision between the two schemes of regulation." Thus, undocumented workers are entitled to lost-pay award under the FEHA in the period before the employer's discovery of the worker's immigration status (including the post-termination period before discovery of immigration status).

Discovery and immigration status

In litigation, employers frequently try to discover a Plaintiff's immigration status, either to intimidate the Plaintiff or undermine their damages. California has strong protections and Evidence Code section 351.2 (enacted via AB 2159) prohibits discovery or admission of immigration status in civil actions unless immigration status is directly relevant to an element of the claim or an affirmative defense – and the burden is on the party seeking the evidence to show that relevance. In most wage/hour and discrimination cases, status simply isn't relevant. You should be prepared to file a motion for protective order if the employer serves discovery aimed at status and cite section 351.2 and the line of cases interpreting it.

Issues with mitigation

Under FEHA, a wrongfully terminated plaintiff has a duty to mitigate damages by making reasonable efforts to find comparable employment. Failure to mitigate can reduce or eliminate back-pay recovery. The standard is reasonable diligence (does not have to be perfect) and the burden rests on the defendant to prove failure to mitigate.

The mitigation doctrine assumes that the labor market is one that is easily accessible. However, during the periods of active ICE enforcement, particularly in 2025 and early 2026, for many workers, even those that are documented, physically leaving home to seek employment increased the risk of encountering ICE. Appearing at a worksite or hiring agency put many immigrants at risk, especially in immigrant-heavy industries. Documented status did not eliminate the fear, making it difficult for workers to comply with their mitigation duties of looking for work.

When representing undocumented workers, you should also be prepared to address the argument that an undocumented worker "can't mitigate" because they can't legally work. California courts have generally rejected this as a basis to reduce damages, but it comes up.

Practical considerations and counseling clients

When representing undocumented clients, there is a heightened obligation to protect your client's information and immigration status. Clients will be understandably scared of the legal system and clients should be counseled early about protecting their status with the attorney-client privilege and that California law protects a worker regardless of status and that an employer cannot lawfully retaliate by reporting them. At the same time, you need to be honest about the risks – particularly in the current enforcement climate – and ensure informed consent about the litigation process. Consider whether the client has any pathway to lawful status (a U-visa, for instance, if

they've been a victim of certain crimes including labor trafficking or extortion) and whether a referral to an immigration attorney is warranted.

I-9 and employer knowledge

If the employer knowingly hired an undocumented worker, that may actually strengthen many of your claims – the employer can't turn around and assert the worker's lack of authorization as a defense when they were complicit in the situation. But be cautious about how you develop this record, because you don't want to inadvertently create a basis for the employer to involve immigration authorities.

Tax identification and wage records

Many undocumented workers are paid in cash or use ITINs rather than SSNs. This can create evidentiary challenges in proving hours worked and wages owed. Labor Code section 1174 places the burden of maintaining accurate records on the employer, so gaps in documentation generally cut against the employer, not the employee. ♦

Lorena Vazquez is an employment and personal-injury attorney and the founder of Vazquez Law, based in the Larchmont Village neighborhood of Los Angeles. Born and raised in LA, she earned her undergraduate degree from UCLA and her Juris Doctor from the University of San Francisco School of Law. Her practice focuses on discrimination, harassment, retaliation, and wrongful termination, and she also represents personal injury victims navigating some of the most difficult moments of their lives. She serves on the board of governors of the Beverly Hills Bar Association, where she is vice-chair of the Labor & Employment Section.