

RIGHTS OF UNDOCUMENTED WORKERS IN CALIFORNIA



Given the Trump Administration's rhetoric against immigrants and immigrant communities, many individuals are understandably feeling anxious and worried about the current climate, as it pertains to them and their families. Basically, the Trump Administration has issued various different orders, memos and FAQs stating essentially the same thing: everyone without lawful immigration status is a priority for removal with the exception of individuals with DACA, to the extent that they do not become a removal priority. These memos and orders do not impact California labor laws, or have no impact on the content of this handout.

WORKING WITHOUT AUTHORIZATION IS NOT A FEDERAL OR STATE CRIME

The State of California has not criminalized undocumented workers. The federal government has the exclusive authority to regulate immigration, and working without authorization is not a crime under any federal statute. The new Trump executive orders or memos do not have anything to say on this matter. Further, the U.S. Supreme Court has refused to impose harsher identity theft penalties on people who work with falsely obtained social security numbers. See *Flores-Figueroa v. United States*, 556 U.S. 646 (2009).

UNDOCUMENTED WORKERS ARE ELIGIBLE FOR WORKER'S COMPENSATION AND PROTECTED FROM WORKPLACE DISCRIMINATION AND HARASSMENT

The California Labor Code applies to all workers in California, regardless of their immigration status. California labor laws protect undocumented workers who suffer job discrimination or workplace injury. *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal. App. 4th 833. Further, Labor Code section 1171.5 provides that for purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status.

SB 1001 FORBIDS UNFAIR IMMIGRATION RELATED PRACTICES

Employers are responsible for ensuring that they hire individuals who are authorized to work in the U.S. through proper I-9 compliance. However, employers can also get in trouble for discriminatory hiring practices if they are overzealous in their attempts to discover whether a potential employee is authorized to work in the US. This may include but is not limited to asking to see a U.S. passport, refusing to accept an EAD that contains a future expiry date, re-verifying green card documents, and wanting to know an employee's immigration status. Under federal law, these actions can constitute discrimination based on national origin. Under SB 1001, an employer can be fined up to \$10,000 for engaging in unfair immigration related practices.

INDIVIDUALS WHO ARE FORCED TO WORK, THREATENED FOR THEIR IMMIGRATION STATUS, OR DEFRAUDED BY EMPLOYERS MAY BE ABLE TO GAIN LAWFUL STATUS

Persons who are recruited to work in the United States through the use of force, fraud or coercion by their employer may be eligible for lawful status as survivors of labor trafficking (T visa). To qualify for T nonimmigrant status, a person must:

- Be or have been a victim of severe trafficking in persons;
- Be physically present in the United States on account of trafficking;
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation of human trafficking or be under the age of 18 or be too traumatized to comply;
- Demonstrate that the individual would suffer extreme hardship involving severe and unusual harm if s/he were removed from the United States.

BUSINESSES CANNOT FIRE WORKERS FOR SEEKING TO CHANGE THEIR NAME OR UPDATE THEIR SOCIAL SECURITY NUMBERS OR WORK AUTHORIZATION DOCUMENTS

A restaurant or other employer cannot fire, discriminate, retaliate, or take any adverse action against an employee who updates or tries to update her or his personal information based on a lawful change of name, social security number, or federal employment authorization document. This protection extends to undocumented immigrant employees who come forward to disclose their real identities based on lawful changes to their immigration information/documentation or provide their newly-acquired AB-60 driver's licenses to their employers.

WORKING WITHOUT AUTHORIZATION HARDLY EVER IMPACTS FUTURE ELIGIBILITY FOR LAWFUL PERMANENT STATUS

Unless an individual is convicted of a crime, generally, working without authorization does not make one inadmissible for the purposes of immigration law. It does not preclude an undocumented individual from being eligible for a green card, and eventually, citizenship, through a family member, such as a spouse, U.S. citizen parent or U.S. citizen child.

IN THE EVENT OF A WORKPLACE RAID, UNDOCUMENTED WORKERS HAVE RIGHTS

Employers and workers have some options when it comes to immigration raids. Employers need not let officers inside their business unless the officer has a warrant specifically granting them access. In the event that ICE does have a warrant and is permitted on the premises, workers have the right to remain silent during a raid, and are under no obligation to provide any paperwork to officials unless a warrant specifies.

UNDOCUMENTED WORKERS CAN FORM AND OWN BUSINESSES IN THE UNITED STATES

Individuals without work authorization can own businesses or work as independent contractors. For immigration law purposes, a worker is an owner and not an employee of the business if she has a substantial ownership interest and control over the business. Business owners, as opposed to employees, need not declare their immigration status to anyone.

UNDOCUMENTED WORKERS CAN AND DO FILE TAXES

People who are ineligible to get social security numbers can obtain an Individual Taxpayer Number (ITIN) from the IRS to file their tax returns, or a Federal Employment Identification Number (FEIN) if they own a business. Do note that individuals now need to renew their ITINs with the IRS if their old ITIN numbers have not been used in the past three years on a federal tax return. **As of February 2017, DHS has rolled back privacy protections such that data shared with IRS can be shared with ICE for enforcement purposes.**

UNDOCUMENTED INDIVIDUALS CAN GET PROFESSIONAL LICENSES IN CALIFORNIA IN 40 DIFFERENT PROFESSIONS

A professional license authorizes practitioners of certain professions, such as medicine, nursing, real estate, counseling, law, social work and cosmetology, to work in a given industry. California has 40 licensing boards under the California Department of Consumer Affairs. Senate Bill 1159, signed into law by Governor Brown in September 2014, allows individual applicants for professional licenses to use either a Social Security Number (SSN) or Individual Tax Identification Number (ITIN) in their process to seek such professional licenses.

This material is intended for general information purposes only and does not constitute legal advice. For more information about the immigration consequences of unauthorized work, contact Prerna Lal at plal@ebclc.org. For more information about forming a business, contact Jassmin Antolin Poyaoan at jpoyaoan@ebclc.org