



Workplace Discrimination Overview

This fact sheet is designed to provide you with an overview of important information concerning your workplace rights. Abuse or harassment of employees is never acceptable and may be legally prosecuted, whether you are undocumented or not. The law prohibits your employer from retaliating against you for asserting your workplace rights. If you are an undocumented worker, your employer may not use the threat of contacting the Bureau of Citizenship and Immigration Services (BCIS¹) to discourage you from asserting your workplace rights.

Latinos are often the victims of discrimination in the workplace due to their ethnicity, race, or nationality. Federal law prohibits employers from discriminating against any (documented or undocumented) individual based on race, color, religion, sex, or national origin.²

- An employer may not discipline, harass, fire, and refuse to hire or promote a person based on any of these attributes.³
- It is unlawful for employers to knowingly hire individuals who are not authorized to work.⁴
- When applying for a job, you must provide at least one form of documentation from the list on the back of the employer's I-9 form.⁵ If you have provided the adequate paperwork, your employer may not ask you for further documents. **Specifically, no employer may require a Green Card or require you to disclose the citizen status of family members.**⁶
- The law also prohibits employers from retaliating against anyone who asserts a workplace right.⁷ Abuse or harassment of employees is never acceptable and may be legally prosecuted, whether you are undocumented or not.⁸ They may not use the threat of contacting BCIS to discourage undocumented workers from asserting their rights.

If you have been discriminated against (or harassed or abused) in the workplace, you may have the right to file charges against your employer. **You have these rights regardless of your immigration status.**

- Hiring Discrimination
- Workplace Safety
- Health Care
- Language Rights
- Wages and Hours
- Joining a Union
- Law Enforcement Actions

* Staff from the National Council of La Raza (NCLR), who contributed to this document include Angela Arboleda, Civil Rights Policy Analyst, Lynda Barros, former Director of the Emerging Latino Communities Initiative, and Christine Dolph, former Health Care Policy Associate, who provided substantive oversight for the document's completion. Erica Phillips, former NCLR intern from Haverford College, researched and prepared a draft of this fact sheet. Sonia M. Pérez, Vice President Research and Strategic Initiatives, and Jennifer Kadis, Editor; and Nancy Wilberg, Assistant Editor, provided editorial guidance. Vincent Eng, legal director of the National Asian Pacific American Legal Consortium (NAPALC), provided legal guidance. The content of this document is the sole responsibility of NCLR and may not reflect the views of NCLR's funders. This fact sheet is for informational purposes only and does not constitute legal advice. An attorney should be consulted for legal opinion.

Hiring Discrimination



I believe I was refused employment simply because I am Latino. What can I do?

Your options depend on the number of employees in the company in which you work.

If your employer has **15 or more employees**, the U.S. Equal Employment Opportunity Commission (EEOC) has jurisdiction over your claim. The EEOC can be reached at its toll-free phone number (800) 669-4000 or through the EEOC website at www.eeoc.gov.

If you file a complaint with the EEOC⁹, the EEOC will not share your identity and immigration status with BCIS. However, you may want to hire a lawyer to help you with this process.

Once you file a complaint, EEOC will evaluate your charge and conduct an investigation. It will give you one of three responses:

- 1) It will tell you that you have no case against your employer;
- 2) It may take your case themselves (there is a very small chance of this); or
- 3) It will give you a "Right-to-Sue" Letter. This allows you to hire a lawyer (if you did not do so initially) and take the case to court. There are several immigration lawyers associations that will serve as legal counsel for lower fees or - in some cases - **free of charge** (see NCLR's Legal Resources sheet).¹⁰

If your employer has between **four and 14 employees**, call the U.S. Department of Justice's Office of Special Counsel (OSC): toll-free phone number (800) 225-7688 to file a complaint: or contact the OSC online at oscrt@usdoj.gov. The OSC's office website, containing more information regarding workplace discrimination, is <http://www.usdoj.gov/crt/osc>.

If the company has between **one and three employees**, it is not subject to federal provisions, and you should explore state-level assistance to address your complaint.¹¹

Workplace Safety

According to an article published by the Department of Labor's Office of Safety and Health Administration (OSHA), "Hispanic or Latino workers suffered a disproportionate number of workplace deaths in 2000."¹²

Employers in the United States must provide a workplace that is safe and healthy for their employees; OSHA protects these rights for every individual who works in the United States. OSHA is reaching out to Latino workers by:

- Translating publications into Spanish.
- Initiating a national clearinghouse for training materials in Spanish.
- Creating a Spanish-language website at <http://www.osha.gov/as/opa/spanish/index.html> for employers and employees.

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Q I did not understand the safety issues and benefits because they were explained to me in English. What can I do?

A OSHA protects the rights to a safe and healthy workplace for every individual who works in the United States. Since employers are not allowed to discriminate based on national origin, this requires them to provide adequate information and training in health and safety in languages other than English. If they fail to do so, you have the right to report them by calling (800) 321-6742 and pressing 2 to speak to a Spanish-speaking operator.

Q In the textile factory where I work the air is full of dust and debris which have given me allergies and a bad cough. Can I do anything about this?

A OSHA requires high health standards on the job, particularly in factories where the machinery can cause harm to one's health. OSHA protects workers in various industries, governing safety issues in construction work, meat-packing, aviation, chemicals, etc. OSHA regulates workplace conditions, such as ventilation for textile factories, excavation hazards, and shipyard safety.

If you are experiencing a dangerous situation at work and your employer has not responded to your safety requests, you may call the OSHA hotline toll-free at (800) 321-6742 and speak with a Spanish-speaking operator. All calls are confidential.¹³

Q What should I do if I am injured on the job?

A If the nature of your work caused you to develop a health condition or if you are seriously injured on the job, you are entitled to Workers' Compensation. This is a sum of money, provided by your employer, which will pay your medical expenses for a work-related condition. Workers' Compensation also entitles you to be paid for any work days that you missed while you were recovering, if it totals more than seven days off the job. **It does not matter who is to blame for the injury: if you are hurt at work, your employer must pay the medical expenses.** If s/he refuses to do so, they are breaking the law.¹⁴ If you are injured and your employer does not allow you to take time off or see a doctor, he or she is violating your right to a safe workplace. In cases such as these, you may contact OSHA toll-free at (800) 321-6742 to file a charge. You may want to contact a lawyer before you file. The National Employment Law Project offers free legal assistance, at (888) 218-6974 (Tuesdays and Thursdays).

Q I don't have health insurance. What can I do if I get hurt or sick?

A If you are experiencing an emergency, it is important to know that all individuals are entitled to receive emergency medical treatment (including labor and delivery) regardless of their immigration status. If it is not an emergency, you can also try to seek services at a community health center in your area. You should not be afraid that using a health service will hurt your ability to adjust your immigrant status or your ability to sponsor a family member.¹⁵ Also, when needed, **translations of critical forms and documents for medical services as well as interpreters/language lines should be available to you at no extra charge.** You should not be forced to use your children as interpreters/translators. You should always be able to understand the care you are receiving.¹⁶

Q Are Social Security Numbers needed for emergency medical treatment?

A There is no need to provide Social Security Numbers or immigration status when filling out emergency room paperwork.

Q When do I have to provide a Social Security Number or that of a family member?

A You are only required to give your Social Security Number if you are applying for public health insurance for yourself. You should not have to give the information of anyone else in your family. You do not have to provide your Social Security Number or other information if you are applying for someone else who is eligible, such as a child of yours who was born in this country. However, if you are applying for a child, you are usually required to provide information about your household income, so they can determine your financial need. Benefits agencies may ask for your Social Security Number in order to verify your income, but they are not allowed to *require* this information. If you do not give them a Social Security Number, your child's chances of receiving health care do not change.



Am I eligible for public health insurance?

If you have children or if you are a lawful permanent resident or a citizen you should check with your local community based clinic or social services office to see whether you and/or your children may be eligible to participate in a health program. Rules vary by state but in general, **if you are a lawful permanent resident (you have a Green Card) and you have been in the country for at least five years you may be eligible for public health insurance**, such as Medicaid, depending on your income. To apply contact your local Medicaid office or call toll free 1-877-267-2323.¹⁷

If you are a lawful permanent resident but you have **NOT** been in the country for five years you are eligible for public health care only in certain states. To find out if you may apply for health care where you live, or to find a community health clinic near you, call the U.S. Department of Health and Human Services at (888) 275-4772. Spanish-speaking operators are available and the call is free and confidential.

If you are an **undocumented immigrant** there may be a community health center in your area which can provide you with low-cost or free health care. You are also able to get emergency care at a hospital. It is important to know that if your children are U.S. citizens, they can be eligible for programs regardless of your immigrant status. Your immigration status has no implication on their eligibility for a program.

If you are **pregnant**, prenatal care may be available regardless of your immigration status (this service varies by state). To learn more about community health care centers, call the U.S. Department of Health and Human Services at (888) 275-4772. Spanish-speaking operators are available and the call is free and confidential.



Will applying for public health and nutrition programs hurt my immigration status or chances of becoming a citizen?



Using public health and nutrition programs does not prevent immigrants from becoming lawful permanent residents (getting a Green Card), put you at risk for deportation, or hurt your ability to sponsor a family member or from reentering the country after travel abroad, *except in a few limited cases*. If you need long-term health care, suspect you might have HIV, or need to appear in immigration court, you should ask an immigration attorney for advice.

How can I get health care for my children?

Q If your **children were born in the United States or if they are legal permanent residents and have lived in the U.S. for more than five years**, they might be eligible for public health care benefits depending on your income and regardless of your citizenship status. If you are pregnant, you might be eligible for government-provided prenatal care for your unborn child. When applying for benefits for your children, it is not required that you disclose your own immigration status or Social Security Number. The public benefits agencies may not require this information about any member of your family other than those who are seeking medical insurance.¹⁸

A If your **children have not lived in the U.S. for more than five years or if they are undocumented**, they are eligible for public health benefits only in certain states. Contact the Human Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services at (888) 275-4772 to find a community clinic in your area.

Language Rights

My employer does not allow my coworkers and me to speak Spanish on the job. Is this legal?

Q Employers can only require employees to speak English *if it is necessary for conducting business in the workplace*. For example, many retail and service jobs require employees to be able to communicate with customers who speak English. Your employer must inform you of the rules regarding when you may or may not speak Spanish. If he or she fails to specify these rules and makes any employment decisions that affect your job, only because you are a Spanish-speaker, they may be breaking the law.¹⁹ If this has occurred at your workplace, you may be allowed to file a national origin discrimination charge with the EEOC.²⁰

Wages and Hours

I may be working too many hours and not receiving pay. What is the minimum wage and how long is a standard workweek? Do I deserve more pay for the work I am doing?

Q Employers are required to compensate all employees for the work they perform. Every worker must be paid at least the minimum hourly wage, regardless of his or her citizenship status. Most states have implemented the federal minimum wage of \$5.15 per hour or more. A few states including California, Illinois, and New York have minimum wage rates higher than the federal minimum wage. Ohio and Kansas follow a lower wage scale while Arizona and many of the southeastern states have

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no minimum wage laws. The standard workweek is 40 hours. If you are denied legal minimum wage and work more than 40 hours a week without overtime benefits, you may be a victim of unfair employment practices.²¹ You may file a charge with the U.S. Department of Labor, Wage & Hour Division. To do this, call toll-free (866) 487-9243.

Q I was recruited from another country (or state) to work at my new job. My employer provided transportation when I moved, but now s/he is deducting money from my paycheck for these costs. I was never informed this would happen. What can I do?

A Employers may not deduct money from your paycheck unless you have agreed with them to do so. In the case that your employer does deduct money to cover such costs, he or she is still required to pay you minimum wage (in those states that have minimum wage requirements).

In other words, if the money you lost to transportation costs leaves you with a salary that is less than minimum wage for any period **your employer is breaking the law unless you authorized the deduction in writing.**

Employers may **not** take money out of your paycheck for any of the following things:

- To pay for things you broke
- To “pay them back” for poor performance
- As a punishment for being late
- For purchasing or cleaning your uniform

Employers are allowed to take allowances for the list of things below, as long as it does not reduce your salary below the minimum wage for any period, and only if it has been authorized by you in writing.²²

- Meals
- Housing
- Tips
- Transportation

Q *My employer requires me to put on my protective gear at the chicken plant before I clock in. This takes up to 30 minutes and I do not get paid for that time. Is this legal?*

A The Department of Labor (DOL) requires that workers receive at least minimum wage for every hour that they work. Preparation in a poultry plant, specifically putting on protective gear, may be considered time at work. If you have not been paid for this time, your employer may owe you back wages.

If you believe you are experiencing this type of wage discrimination, please contact the *Justice for Poultry Workers Campaign* of the National Interfaith Committee for Worker Justice (NICWJ) at (773) 728-8400. This organization may help you contact DOL to start an investigation.

Q *I was fired from my job but never received my last paycheck. What can I do to get my money back?*

A People who work in the United States have the legal right to all of their earnings, even if they were fired. Your employer must pay you any outstanding wages no later than the next regular payday. You may also request to have your wages sent to you in the mail.²³ If you were not paid for hours that you worked prior to leaving your job, you may file a complaint with the Department of Labor, Wage & Hour Division. They may not ask about your immigration status when you file the claim, but you may want to consult a lawyer before you file.

If you were fired illegally, you have the right to get your job back and the right to **backpay** for the time you were not at work, as long as you are a legal permanent resident or have a Green Card or work permit. **Backpay** is an amount of money equal to the amount you would have received if you had remained in the job.

You are entitled to severance pay – money paid to employees who were laid off due to a company closing or downsizing – **only if it was written** into the initial work contract.²⁴

Q *I was fired from my job for wanting to form a union at work. I know that it is illegal for a company to do this, but I do not have legal status; what can I do?*

A According to Supreme Court decision, *Hoffman Plastics Compound, Inc. v. NLRB*, if you were undocumented at the time of firing, **you cannot receive backpay**, even if you were fired illegally.²⁵ In order to get rehired or hired at a new job, you need to prove that your immigration status has changed.²⁶

Q *I work as a housekeeper for a family who pays me \$100 a month, but allows me to live with them. Is this fair treatment?*

A If you are provided with room and board as part of your salary, your employer may deduct the value of these facilities from your wage. However, he or she must inform you of the base value of room and board, and they are prohibited from charging you more. **You are still entitled to minimum wage and a 40-hour workweek, as well as the right to come and go from the house as you please.** If you are not being properly compensated for your work, you may file a charge with the DOL Wage & Hour Division by calling (866) 487-9243.

If you are not allowed to leave the house, if you are underfed or forced to live in uncomfortable conditions, you may file a charge with OSHA; call toll-free number (800) 321-6742 or Break the Chain at (202)234-9382. Undocumented and legal workers alike should seek information from social service agencies in their area to be sure their rights are not being violated.²⁷

Joining a Labor Union

Q *I want to join a labor union. Does this put my job in jeopardy?*

A Every worker has the right to organize, regardless of immigration status. Employers who exploit undocumented workers undermine the rights of all workers by lowering the competitive wages and hours and fostering an unsafe workplace. Through unionization workers can assert their rights collectively, and employers are bound by law to negotiate. For other information on how to organize and improve working conditions, contact the AFL-CIO by calling (202) 637-5000.²⁸

Q *I was at work one day when the Bureau of Citizenship and Immigration Services (BCIS, formerly INS) came and took us all to jail. What are my rights?*

A BCIS raids threaten the rights of citizens and noncitizens alike. Any of the following constitute a violation of your civil rights:

- Physical, verbal, or psychological abuse by BCIS officials.
- Denial of your right to legal counsel/lawyer.
- Denial of the right to a hearing before an immigration judge.
- Denial of due process. If you are arrested, the BCIS may only charge you with an immigration violation and is required to do so within 48 hours. New laws allow for extended detention if there is “an emergency or other extraordinary circumstance” or if the Attorney General has determined that a certain suspect poses a terrorist threat.
- Denial of the right to call your foreign consulate.
- Raids conducted by local police (unless a specific department has entered into an agreement with BCIS, which is a federal agency).

You have the right to remain silent if a BCIS officer asks about your citizenship status. If you are nervous about giving information away, you should talk to a lawyer before answering questions.²⁹ Although you must provide your own lawyer, BCIS is mandated to provide you with a list of agencies that can help you (also, see NCLR’s Legal Resources sheet). Be sure to have your immigration papers with you at all times. BCIS may legally charge you with a misdemeanor if you do not submit official documentation when asked.³⁰

Endnotes

1. The BCIS was formerly the Immigration and Naturalization Service.
2. 42 U.S.C. § 2000e-2(a)(1) - (a)(2), (Title VII of the Civil Rights Act of 1964).
3. *Id.*
4. 8 U.S.C. § 1324a.
5. 8 U.S.C. § 1324a(b)(1)(A)(i), (ii).
6. 8 U.S.C. § 1324(b)(6). See also "Frequently Asked Questions," Office of Special Counsel for Immigration-Related Unfair Employment Practices, <http://www.usdoj.gov/crt/osc/htm/facts.htm>.
7. 8 U.S.C. § 1324(b)(a)(5).
8. See Press Release, Equal Opportunity Employment Commission, EEOC Reaffirms Commitment to Protecting Undocumented Workers From Discrimination (June 28, 2002), available at <http://www.eeoc.gov/press/6-28-02.html> (last visited August 7, 2003).
9. Equal Employment Opportunity Commission, "Federal Laws Prohibiting Job Discrimination: Questions and Answers," available at <http://www.eeoc.gov/facts/qanda.html> (last visited August 7, 2003).
10. LINK TO NCLR WEBSITE TO THE LEGAL RESOURCE SHEET
11. 8 U.S.C. § 1324(a)(2)(A).
12. Occupational Safety and Health Administration, "OSHA Reaches Out to Hispanics About...Seguridad y Salud en el Trabajo," *Job Safety and Health Quarterly*, Spring 2002, pp. 14-17.
13. *Id.*
14. National Employment Law Project, "Your Right to be Paid: Fact Sheet for Workers (January 2002)," (available at <http://nelp.org/docUploads/pub139%Epdf>) (last visited September 6, 2005).
15. http://www.aoa.gov/prof/civil_rights/non_citizens/benefits/dcpubliccharge.asp
16. National Immigration Law Center, "Immigrant-Friendly Health Coverage Outreach and Enrollment (June 2002)," Available at http://www.nilc.org/immspbs/health/Issue_Briefs/Immigrant-Friendly_App_Enrlmnt.PDF (last visited August 8, 2003).
17. <http://www.cms.hhs.gov/medicaid/eligibility/criteria.asp>
18. *Id.*
19. EEOC Guidelines, 29 CFR § 1606.7.
20. *Id.*
21. "Handy Guide to the Fair Labor Standards Act," U.S. Department of Labor, <http://www.dol.gov/esa/regs/compliance/whd/hrq.htm>.
22. "Understanding Deductions from Wages: Fact Sheet for Workers." New York: National Employment Law Project, January 2003.
23. "Your Right to be Paid: Fact Sheet for Workers," *op.cit.*
24. "Handy Guide to the Fair Labor Standards Act," U.S. DOL, <http://www.dol.gov/esa/regs/compliance/whd/hrq.htm>.
25. "Supreme Court Decision in *Hoffman Plastic Compounds v. NLRB*: Fact Sheet for Workers." New York: National Employment Law Project, May 2002. See also *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).
26. *Id.*
27. "The Legal Rights and Resources Available to G-5 and A-3 Domestic Workers," Institute for Policy Studies *Campaign for Migrant Domestic Workers' Rights*, <http://www.ips-dc.org/campaign/Rights.htm>.

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28. "What Union Members Should Know About...Legal Rights of Immigrants," *Building Understanding Creating Change: Defending the Rights of Immigrant Workers* fact sheet series. AFL-CIO, <http://www.aflcio.org/issuespolitics/immigration/>.
29. "Know Your Rights." New York: American Civil Liberties Union, December 2001.
30. "Portrait of Injustice: The Impact of Immigration Raids on Families, Workers and Communities." Oakland: National Network for Immigrant and Refugee Rights, 1998. (Abstract located at American Friends Service Committee website, <http://www.afsc.org/tao/08004.htm>.)