Jesus Gonzalez came to the U.S. in 2003 from Mexico. He worked for a painting company in New Mexico. In August of 2006, he fell off a ladder and, as a result, had to go through multiple surgeries and months of physical therapy.

In April, 2008, Mr. Gonzalez’ employer called him back to work at a lighter-duty job. There was one catch: Mr. Gonzalez would be required to fill out a new employment application which would explicitly include verification of his eligibility for employment. Mr. Gonzalez could not do so, and was rejected for employment by a company which, not so incidentally, had never properly complied with federal law regarding verification of Mr. Gonzalez’ eligibility to work in the United States.

Two weeks ago, the New Mexico Supreme Court affirmed an award of partial disability benefits to Mr. Gonzalez, finding that undocumented workers are entitled to workers’ compensation benefits under New Mexico law, and that the company’s return to work offer was illusory.

The decision is surprising only because it is not surprising. Against an avalanche of companies claiming that they are not responsible for the costs of their own employee’s injury, courts across the country have ruled that undocumented workers are entitled to worker’s compensation benefits. To be exact, courts in 27 states and the District of Columbia have done so: these are Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. Only one court, in Virginia, has ever held that undocumented workers are not entitled to workers’ compensation, and that decision was quickly overruled by the state legislature.

These decisions rest on solid ground. The judges engage in a straightforward reading of workers’ compensations laws, nearly all of which simply apply to “employees.” “Employee” covers anyone engaged in work for an employer, and no more excludes the category of “immigrants” than it does women, or construction workers, or people with blue eyes.

The rulings also represent an acknowledgement of the reality that some 8 million undocumented workers labor in some of the most dangerous jobs available in our economy. Nearly 850 immigrant workers died on the job in 2011, a death toll that rose 13.9 percent from 2009 to 2011.

The decisions are also fully consistent with appropriate public policy. As the New Mexico Court and many others have noted, to deny compensation to injured undocumented workers would encourage unscrupulous employers to hire the undocumented and expose them to extreme workplace dangers.

Finally, judges are rightly refusing to allow employers to profit from their own failures to comply with immigration laws. In Mr. Gonzalez’ case, the employer tried to cover its own tracks by illegally
“reverifying” Mr. Gonzalez’ right to work in the U.S. In other cases, employers take a sudden interest in worker’s immigration status once an accident occurs, and badger them with demands that immigration status must be disclosed as a prerequisite for bringing claims. In still others, unprincipled employers and at least one insurance company have reported injured workers to immigration authorities after learning of a workers’ compensation claim.

Although courts are not succumbing to such employer nonsense, double-dealing companies continue to use injured workers’ immigration status as a means of avoiding responsibility for workplace injuries, and the barrage of litigation continues. Yet another claim that an injured undocumented woman is not entitled to workers’ compensation benefits is currently pending in the Iowa Supreme Court.

And court victories do not even represent half of the battle. While workers who are brave enough to file claims are winning, the chilling effect of these tactics is enormous and undeniable. Even with the law on their side, untold numbers of workers simply choose not to file claims because their status gives their employer such a powerful cudgel to use against them. In fact, nearly 40 percent of work-related injuries and illnesses seen in U.S. emergency rooms are not billed to workers’ compensation. In a heartbeat, an on-the-job injury can become a deportation struggle. Many workers simply won’t take that risk.

These claims can be litigated, over and over again, in every one of the 50 states. Or Congress can solve this problem by passing a comprehensive immigration reform bill that provides these workers with a path to U.S. citizenship and protects all workers from retaliation. In the meantime, the words of one federal judge facing this argument in a wage and hour case come to mind: “It surely comes with ill grace for an employer to hire alien workers and then, if the employer itself proceeds to violate the [law], for it to try to squirm out of its own liability on such grounds.” Hear, hear.

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