

Friday, January 28, 2005
Posted 11:43 PM by Jordan

Undocumented Immigrant Workers: What a Deal!

Jonathan Bennet at NYCOSH forwarded me this article about a couple of crazy legal decisions. Two undocumented immigrant workers who were severely injured on construction sites sued the owner of the sites and others "under New York Labor Law Section 240, which provides that an owner or contractor may be liable when a worker is injured on a construction site due to a failure to provide proper safety protection."

Juries found in favor of the workers (one winning more than \$2 million dollars for pain and suffering, as well as \$96,000 for past and future lost earnings based on what he would have been able to earn in the United States), but the appeals court ruled that because the workers were undocumented, they should "only be awarded damages for lost earnings based on the prevailing wage in the alien's country of origin."

The decision was based on the Supreme Court's 2002 Hoffman Plastics decision that held that undocumented immigrants were not entitled to back wages – even after being illegally fired for union activity – because their job was "obtained in the first instance by a criminal fraud." Some observers thought that the Hoffman decision meant that the workers would not be allowed to receive any award, although the court did not explain how it arrived at the prevailing wage in the worker's country of origin.

All in all, these decisions make hiring undocumented immigrants a pretty darn good deal. You can openly fire them for trying to organize a union without fear of punishment, and you can injure and probably even kill them without fear of being sued.

Not a bad deal.