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Split Supreme Court Says Undocumented Worker Can Sue Employer for Retaliatory Discharge

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A narrowly divided Minnesota Supreme Court on Wednesday ruled that federal immigration law doesn't bar an undocumented worker from bringing a retaliatory discharge suit against his former employer after he was placed him on unpaid leave until he could provide proof of his authorization to hold employment in the United States.

The four-justice majority in Sanchez v. Dahlke Trailer Sales also said there was a triable question as to whether the employer's actions amounted to the termination of the worker, as there was reason to doubt whether the employer ever intended to rehire him, even if he could obtain a change in his immigration status.

Anibal Sanchez lawfully entered the United States on a tourist visa in 1998. After the visa expired, he remained and used a false Social Security number to obtain a job with Dahlke Trailer Sales in 2005.

Sanchez claimed that his managers at Dahkle knew he was not authorized to work in the United States, but it was never a problem until he got hurt while using a sandblaster in September 2013.

After this accident, Sanchez hired an attorney to pursue a workers' compensation claim. He admitted that he did not have legal work authorization during the proceedings.

Two days after this admission, Sanchez's manager allegedly told him that he could not continue working for Dahlke "because of [his] legal situation."

The owners of Dahlke later sent Sanchez a letter indicating he was being placed on an unpaid leave of absence, and that he would not be allowed to return to work until he could prove be was eligible to work in the United States.

Sanchez filed suit against Dahlke for violating Minnesota Statutes Section 176.82.

The statute prohibits an employer from discharging an employee for his pursuit of workers' compensation benefits, or from obstructing the ability of an employee to receive such benefits.

Anoka County District Court Judge Lawrence R. Johnson granted Dahkle's motion for summary judgment dismissing Sanchez's suit in 2015.

Because Sanchez acknowledged that he could return to Dahlke if he became legally authorized to work, Johnson said, his unpaid leave was a result of his immigration status, not his workers' compensation claim.

Johnson also opined that Dahlke's placing Sanchez on unpaid leave was not the same thing as firing him, as Dahlke was simply complying with federal law prohibiting employers from knowingly employing undocumented workers.

A panel from the Court of Appeals unanimously reversed Johnson last summer, finding the evidence in the record was sufficient to raise material questions as to whether Dahkle had retaliated against Sanchez.

Dahlke then petitioned the Supreme Court for review.

The court on Tuesday upheld the Court of Appeals decision, agreeing that a genuine issue of material fact existed as to whether Dahlke had violated Section 176.82.

The court noted that the statute prohibits only a narrow range of conduct — discharge, threatened discharge and intentional obstruction of benefits — and that it does not provide an explanation for what it means for an employer to "discharge" a worker.

The court said the actual intent of the employer is key to the determination of whether a discharge occurred.

"If the employee places an employee on a 'temporary' leave, but intends that the leave should never end, then the employer is really discharging the employee," the court opined.

Considering the evidence in a light most favorable to Sanchez, the court said it was questionable whether Dahlke intended for his unpaid leave to be permanent. The court said this question had to be answered by a jury, and the same went for the question of Dahkle's motivation for placing Sanchez on leave.

The court went on to say it was not persuaded by Dahkle's argument that federal law required that Sanchez be put on leave.

The Immigration Reform and Control Act prohibits employers from knowingly hiring undocumented workers and from continuing to employ workers whom the employer knows to be undocumented, the court said.

The court said Dahkle's compliance with Section 176.82 doesn't force it to violate the IRCA because the statute does not require that Dahlke continue to employ a worker after becoming aware that he is undocumented. All the state law does is prohibit Dahlke from discharging an employee because he sought workers' compensation benefits.

Since the focus of the state law is on the employer's motivation, the court said, "Dahlke would have followed the IRCA without violating the anti-retaliation statute if it discharged Sanchez because of his immigration status, and not because of his protected activity."

The court further reasoned that the enforcement of Section 176.82 furthers the IRCA's goal of discouraging employers from hiring unauthorized aliens.

“If the workers’ compensation anti-retaliation statute does not apply to employers of undocumented workers, then those employers are in a position to save costs, especially in borderline cases in which they can plausibly claim ignorance of an employee’s immigration status until after he or she becomes injured at work,” the court said.

Without Section 176.82, the court suggested, the employment of undocumented workers would be more “cost-effective” for employers, and that would undermine the purpose of the IRCA.

Justice Barry Anderson dissented, along with Chief Justice Lorie Gildea and Justice David Stras.

Once Sanchez admitted he was not legally authorized to work in the United States, the dissenters said, Dahlke could not actively employ Sanchez without running the risk of civil and criminal sanctions under the IRCA. They said they didn’t view Dahlke’s decision to place Sanchez on leave as a “discharge” for purposes of Section 176.82.

What’s more, they said, even if Dahkle fired Sanchez because he filed a workers’ compensation claim, the company's conduct would have been “compliant with federal law.”

The dissenters insisted that it simply “was not possible for Dahlke to comply with both state and federal law.” Since federal law trumps conflicting state laws, the dissenters said, the IRCA should pre-empt Section 176.82 and foreclose any penalty against Dahkle for its conduct.

Attorney Joshua A. Newville of Madia Law represented Sanchez before the Supreme Court.

He said Thursday that the court’s ruling makes it clear that an employer can’t discharge a worker and “call it something short of that, and have the last word on what it was.”

The decision also established that an employer “can’t have the fruits of the labor of an employee it knows to be undocumented, then turn around and use that undocumented status as a sword for retaliation and a shield for liability, Newville said.

The Minnesota Chapter of the National Employment Lawyers Association and the Employee Lawyers Association of the Upper Midwest both supported Newville’s position as amici.

Emma R. Denny of Halunen Law was one of the co-authors of the NELA brief. She said the decision “sent a strong message to employers not to penalize people they’ve known to be undocumented simply because they sought workers’ compensation benefits.”

It also tells employers they can’t “dress up” a discharge as anything different, because “the court’s going to call it what it is,” Denny said.

Denny said that the decision also serves the public policy interests of the state, since it avoids giving employers “an incentive to hire undocumented workers” and it “encourages undocumented workers to come forward when they are experiencing unlawful activities.”

According to Workplace Fairness, a California-based workers' rights group, 6.5 million undocumented immigrants are employed in the United States. Although such workers are often reluctant to pursue comp claims, almost every state workers' comp law gives them the right to do so.

Idaho and Wyoming have statutes that exclude undocumented workers from the ability to receive comp benefits, but the comp laws in Arizona, Arkansas, Colorado, Montana, North Carolina, Tennessee, Utah and Virginia specifically provide coverage to workers who are not lawfully employed.

The eligibility of undocumented workers to receive benefits has been established by case law in Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Virginia.

Earlier this month, the Ohio Senate Committee on Insurance and Financial Institutions rejected a proposal to eliminate the eligibility of undocumented workers to receive comp benefits.

But just because an undocumented worker is eligible for benefits, that doesn't necessarily mean he will receive every available benefit.

Nebraska denies vocational rehabilitation benefits to illegal aliens because they are unable to return to some form of employment. Courts in Michigan and Pennsylvania have placed limitations on the availability of time-loss recovery for injured workers based on the inability to legally work in the United States, as has the New Hampshire Supreme Court.

In California, the Workers' Compensation Appeals Board has ruled that employers are not liable for temporary total disability benefits when immigration status is the sole reason a worker is unable to accept an offer of modified work.

Georgia also has similar precedent, and New York's highest court has also ruled that a worker is ineligible for vocational and educational services if he cannot be legally employed in the United States.

On the other hand, the Tennessee Supreme Court last November struck down a statutory cap on the benefits payable to undocumented workers.

In December, the Delaware Supreme Court ruled that an undocumented immigrant cannot automatically be deemed entirely unemployable after a workplace injury just because he lacks the legal ability to find another job in the United States.

And earlier this year, the Indiana Supreme Court ruled that an injured worker could pursue a damage claim for his lost future earnings in the U.S. job market, even though his immigration status did "not allow him to be legally employed.

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