

Supreme Court decision in Hoffman Plastic Compounds v. NLRB.

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

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In March, 2002, the U.S. Supreme Court decided a case called ***Hoffman Plastic Compounds v. NLRB.***

What is the case about? A worker without immigration papers was working at a factory. His employer violated the National Labor Relations Act (NLRA) by firing him for helping to organize a union. The question for the Supreme Court was whether the worker could receive the usual remedy of “backpay” for the time he was not working because he had been illegally fired.

What is backpay under the NLRA? Backpay is money the employer is required to pay a worker to make up for wages the worker would have earned if she or he had not been illegally fired.

What did the Supreme Court decide? The worker could not be awarded backpay because he is undocumented.

Do I still have rights as a worker after *Hoffman Plastic*?

- ✓ **Right to organize: Yes.** It is still illegal for an employer to punish or threaten you for organizing to improve your work conditions.
- ✓ **Right to be paid: Yes.** You still have the right to be paid minimum wage and overtime. If you do not receive all of the wages for time you actually worked, you can still recover those wages.
- ✓ **Right to be free from discrimination: Yes.** It is still illegal for an employer to discriminate against or harass you based on things like: race, color, religion, national origin or sex.
- ✓ **Right to be safe on the job: Yes.** You are still protected by workplace health and safety protections.

Basically, you still have most of the same rights you had before the Supreme Court’s decision in *Hoffman Plastic Compounds v. NLRB.*

The main change is that, if you are undocumented and illegally fired because you were involved in labor activities, you can no longer get backpay for the time you were not working.

Then, why should I be concerned about the case?

- Some employers are improperly using the case to threaten or harass workers who are organizing to improve their work conditions. Some employers have falsely told workers that if they are undocumented they do not have the right to organize.
- Undocumented workers now have fewer remedies under the laws, because if they are fired for labor activities, they can't receive backpay.
- Some employers will use this decision to argue that undocumented workers should not be covered by other laws that protect workers.
- Workers may be asked to reveal their immigration status more often when they try to enforce their rights in court or in government agencies.
- When one group of workers loses some of its rights, the conditions for all workers become worse.

What can I do?

- Educate yourself and other workers about what the *Hoffman Plastic* decision is really about and what rights workers have.
- Continue to organize with other workers to improve workplace conditions.
- Keep track of stories about employers using the *Hoffman Plastic* decision to threaten or harass workers who are organizing to improve their conditions.
- Support campaigns for better laws to protect workers.
- Support campaigns to make sure that government agencies do their job to protect workers.