

## From the National Employment Law Project

### **For Immediate Release:**

April 28, 2010

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## **Workers' Memorial Day: Employer Exploitation of Immigration Status to Avoid Accountability for Workplace Injuries Must End**

### ***Rash of Court Cases Exposes Loophole & Prohibited ICE Intervention When Immigrant Workers Seek Injury Comp Claims***

Seattle, WA – Today the National Employment Law Project observes Workers' Memorial Day to recognize the millions of men and women who face enormous risks and suffer tremendous loss as they work day-to-day to support themselves and their families. The costs of physical injuries for immigrant workers injured on the job, in particular, are often magnified by employers who exploit workers' immigration status as a club to intimidate or beat back benefits claims.

A series of recent court cases have underscored the vulnerabilities immigrant workers face when seeking compensation for on-the-job injuries, and the lengths employers will go to to avoid accountability for those workers. In three instances, employers have challenged benefits claims in court by revealing a worker's status in an effort to nullify any responsibility for the injuries – even though workers' compensation laws explicitly permit workers to file claims regardless of citizenship.

"Immigrant workers are increasingly running into battles over status when they file a straightforward compensation claim. The workers are winning those cases in court – but employers nevertheless are using injured workers' immigration status as an extra-judicial means of avoiding responsibility for workplace injuries. In a heartbeat, an on-the-job injury becomes a deportation struggle that is totally out of bounds. It is a perverse loophole that immigration authorities have to clamp down on, just as judges have," said **Rebecca Smith of the National Employment Law Project**.

The cases come as injury rates for Latino workers have risen dramatically:

- This month the [Washington State Supreme Court](#) declared that a construction worker, Alex Salas – who suffered severe injuries when he fell more than 20 feet from wet scaffolding – had a right to recover lost wages in court. After years of legal battles, the Court ruled that allowing evidence of the worker's immigration status was unfairly prejudicial to his case, and "an abuse of discretion" by the lower court.
- In October 2003, Jorge Rodriguez severely hurt his back, chest, rib and head when he fell while working as a welder for Bollinger, a Louisiana shipyard. His employer exploited Mr. Rodriguez' status and tried to deny any responsibility based on his immigration status but the [Fifth Circuit Court of Appeals](#) issued a forceful ruling last week that all workers are protected and eligible for benefits when injured on the job.

Other employers and insurers are taking a more direct route than lengthy and ultimately unsuccessful legal battles, and instead, turning injured immigrant workers over to immigration or other authorities.

- In March, 2009, Omar Damian Ortega, a worker injured on the job in Milwaukee, filed a workers' compensation claim. The insurer in the case, West Bend Mutual Insurance, turned him over to authorities. After spending five months in jail, Mr. Ortega now faces the possibility of deportation. A Milwaukee workers' center, [Voces de la Frontera](#), has taken up his case, and is imploring ICE to drop the charges.
- A [recent report](#) by NELP, American Rights at Work and the national AFL-CIO detailed three other incidents, in Kansas and Rhode Island, in which employers and insurance companies turned workers in to authorities after on the job injuries.

“Judges are stepping in to make it clear that immigration status does not disqualify a worker from filing claims and recovering compensation for work-placed injuries. Now we need immigration authorities to step up as well. If employers are relaxed about immigrant worker safety because they feel they can avoid liability, they have less incentive to maintain safe and healthy workplaces overall, and that puts all workers at risk. It is disturbing that some employers are choosing to handle safety and responsibility in the workplace like this – and that ICE is complicit in the scheme,” said Smith.

Efforts are underway to make safer workplaces for workers and immigrants in particular. Last week Secretary of Labor Solis hosted an OSHA conference geared toward protecting the health and safety of Latino workers, and the Department of Labor recently launched a worker outreach education initiative targeting Latinos.

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