

NJ Supreme Court: Illegal Aliens Are Entitled to the Full Protection of New Jersey Workplace Laws

Labor & Employment Law Alert

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7/6/2026

New Jersey's highest court recently answered the question, "What rights to pay does an illegal alien have?" by concluding that such person has the same rights to compensation under New Jersey law as a U.S. citizen or a person authorized to work here.

Federal law prohibits the employment of any person who is present in the U.S. without authorization for permanent residence or who does not have authorization to be employed here. There are, according to an [Office of Homeland Security 2024 estimate](#), nearly 11,000,000 illegal aliens in the U.S., of whom approximately 89 percent are age 18 and older, and of whom approximately 490,000 are present in New Jersey. Employers are required to verify a person's employability status under federal law within three days of the start of employment using [Form I-9](#).

Several courts and federal agencies have held that a person who cannot be employed under federal law cannot obtain damages under workplace rights laws. For example, such individuals are not entitled to back wages under the National Labor Relations Act, even if they were fired illegally. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

In [Sergio Lopez v. Marmic, LLC](#), New Jersey's Supreme Court confronted a claimant who had presented fraudulent documentation during the I-9 process and who, in return for serving as a building superintendent, had been provided with housing. The individual brought a claim for wages, even though he could not recall the hours he had worked. The court held that none of these factors were an impediment to collecting wages under the state's wage payment law. The court reasoned that New Jersey law requires the payment of wages for time spent working, and the claimant had spent time working as the building's superintendent. The court also noted that the law required the remittance of compensation, not a bartering for housing, and

that trial courts should be particularly suspect about admitting evidence regarding a worker's deception to obtain employment.

New Jersey employers should take away from *Sergio Lopez* the court's explicit holding and implicit message that workers, regardless of their legal status under federal law, will be afforded full rights under New Jersey workplace laws.

For advice about workforce management, including compliance with the I-9 Form process and the employment of illegal aliens, please contact any member of the Firm's Labor and Employment practice group.

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**This is intended to provide general information, not legal advice. Please contact the author if you need specific advice.*

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