

# Workers Compensation and Undocumented Workers

A “Y” below means illegals are probably entitled to benefits, while an “N” means they are probably not. A “U” means that status is unknown.

**DISCLAIMER:** The following chart is a work in progress, should be considered a draft, and should not be relied upon for absolute accuracy, particularly given that statutes or case law may change without notice. If you are aware of any inaccuracies or additional information that should be included as this document progresses, please email [Nancy.Germond@iaba.net](mailto:Nancy.Germond@iaba.net).

Postal Abb.	State	Y/N	State/Federal Law	Case Law or Regulatory Ruling	Commentary
U.S.	United States		8 U.S.C. § 1324a	Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (U.S. Sup. Ct. 2002)	The Immigration Reform and Control Act (IRCA) of 1986 (Public Law No. 99-603, 100 Stat. 3359, 8 U.S.C. 1324a) is intended to discourage employment of illegal aliens and criminalizes the use of fraudulent documents by illegals, though it does not penalize illegal aliens for engaging in employment. IRCA does not supplant state workers compensation laws.
AL	Alabama	Y	Section 25-5-1(5)	Omar Santos-Cruz v. Lambert (2005)	Statute includes aliens, but is silent on their legal status.  <i>Santos-Cruz</i> was a non-precedent setting Alabama circuit court decision which was not appealed.
AK	Alaska	U	Section 23.30.395(19)	Statute is silent	
AZ	Arizona	Y	Ariz. Rev. Stat. § 23-901(5)(b)	Tiger Transmissions v. Industrial Commission of Arizona, No. 1 CA-IC02-0100 (2003)	The statute expressly includes illegal workers.
AR	Arkansas	Y	Ark. 11-9-102(9)(A)		The statute expressly includes illegal workers.
CA	California	Y	Cal. Lab. Code §3351	Foodmaker v. Workers' Compensation Appeals Board, 78 Cal. Rptr. 2d 767 (Cal. App.	The statute expressly includes illegal workers.

		N*	3351	Ct. 1999) Farmer Brothers Coffee v. Ruiz, 133 Cal. App. 533 (Cal. App. Ct. 2005)	* <i>Foodmaker</i> established that illegals could be refused vocational rehabilitation benefits.
CO	Colorado	Y	Colo. Rev. Stat. § 8-40-202(b)	Champion Auto Body v. Gallegos, 950 P.2d 671 (Colo. App. Ct. 1997)	
CT	Connecticut	Y	Sec. 31-275(9)	Dowling v. Slotnik, 712 A.2d 396, 403 (Conn. App. Ct. 1998)	
DE	Delaware	U	Title 19, § 2301	The statute is silent on undocumented as employees.	
FL	Florida	Y*	Fla. Stat. § 440.02(14)(a) and 440.105(4)	Gene's Harvesting v. Rodriguez, 421 So.2d 701 (Fla. App. Ct. 1982) Safeharbor Employer Services v. Velazquez, 860 S.O.2d 984 (Fla. App. Ct. 2003)	* Statute prohibits compensation if the employment was obtained under false pretenses. <i>Gene's</i> ruled that, if illegals were intended to be excluded by statute, they could have been.
GA	Georgia	Y* N**	O.C.G.A. § 34-9-1 and 34-9-240	Dynasty Sample Co. v. Beltrain, 224 479 S.E.2d 773 (Ga. App. Ct. 1996) Continental Pet Technologies, Inc. v. Palacias, 604 S.E.2d 627 (Ga. App. Ct. 2004) Earth First Grading v. Gutierrez, 606 S.E.2d 332 (Ga. App. Ct. 2004) Martines v. Worley & Sons Construction, 628 S.E.2d 113 (Ga. App. Ct. 2006)	<i>Continental</i> ruled that, since the statute included "every person" under contract of hire as an employee, that would include illegals. * <i>Earth</i> ruled that disability benefits were payable if the illegal was unable to work because of the injury. ** <i>Martines</i> ruled that disability benefits were not payable if the illegal was unable to work due to his illegal status and not the injury.
HI	Hawaii	Y	WC Part 1, §386-1		The statute is silent on undocumented workers.

ID	Idaho	Y	Idaho Code § 72-1366(19)(a)		
IL	Illinois	Y	Ill. Comp. Stat. 820/305(1)b		
IN	Indiana	U	Ind. Code Ann. § 22-3-6-1(b)		
IA	Iowa	Y	Iowa 85.61	Iowa Erosion Control v. Sanchez, 599 N.W.2d 711 (Iowa App. Ct. 1999)	
KS	Kansas	Y	Chapter 44, Article 5, 44-508(b)	Jurado v. Popejoy Constr. Co., 853 P.2d 669 (Kan. Sup. Ct. 1993)	
KY	Kentucky	Y	Ky. Rev. Stat. Ann. § 342-0011(21)		
LA	Louisiana	Y	LA Rev. Stat Ann 23-1015-1	Artiga v. M.A. Patout & Son, 671 So.2d 1138 (La. App. Ct. 1996)	
ME	Maine	U	ME Rev Stat Ann 39-A 102-11(B)		
MD	Maryland	Y	MD Code, Lab & Emp 9-202(a)	Design Kitchen and Baths v. Lagos, 882 A.2d 817 (Md. App. Ct. 2005)	
MA	Massachusetts	Y	MA Gen Laws Ch 152 1 - 4	Medellin v. Cashman KPA, et al., Mass. Dept. of Industrial Accidents (2003)	<i>Medellin</i> ruled that a contract between an employer and an undocumented worker was an enforceable contract.

MI	Michigan	Y*	Mich. Stat. Ann. § 17-237(161)(1)(l)	Sanchez v. Eagle Alloy, 254 Mich. App. 651 (Mich. App. Ct. 2003)	* <i>Sanchez</i> ruled that the illegal was entitled to medical, but not disability because of the commission of crime under the IRCA.
MN	Minnesota	Y	Minn. § 176.011(9)	Correa v. Waymouth Farms, Inc., 664 N.W.2d 324 (Minn. Sup. Ct. 2003)	Statute includes aliens, but is silent on their legal status.  <i>Correa</i> ruled that, if illegals were intended to be excluded by statute, they could have been.
MS	Mississippi	Y	Miss. Code Ann. § 71-3-27		
MO	Missouri	U	Missouri Ann Statute 287.020.1		
MT	Montana	Y	Mont. Code Ann. § 39-71-118(1)(a)		Statute provides benefits even if unlawfully employed.
NE	Nebraska	Y N*	Neb. Rev. Stat. §§ 48-115(2) and 48-144	Isaac Ortiz v. Cement Products	* <i>Ortiz</i> established that Ortiz could be refused vocational rehabilitation benefits because he could not legally work in the U.S. and stated that he did not plan to return to Mexico to work.
NV	Nevada	Y*	Nev. Rev. Stat. Ann. § 616A.105	Tarango v. State Industrial Insurance System, 25 P.3d 175 (Nev. Sup. Ct. 2001)	* <i>Tarango</i> established that vocational rehabilitation benefits were covered since he could get employment outside the U.S.
NH	New Hampshire	Y*	NH Rev. Stat Ann 281-A-2	Rosa v. Partners in Progress, Inc. No. 2004-32 (N.H. Sup. Ct. 2005)	* <i>Rosa</i> ruled that disability payments were recoverable at U.S. wages instead of home country wages if the employer was aware, or should have been aware, of the illegal status.

NJ	New Jersey	Y	NJ Stat Ann 34:15-36	<p>Montoya v. Gateway Insurance Company, 168 N.J. Super. 100, 104 (N.J. Super. Ct.1979)</p> <p>Fernandez-Lopez v. Jose Cervino, Inc. 671 A.D.2d 1051, 1054 (N.J. Super. Ct. 1996)</p> <p>Mendoza v. Monmouth Recycling Corporation, 672 A.2d 221 (N.J. Super. Ct. 1996)</p>	<p><i>Mendoza</i> ruled that, since illegals can file civil court actions, they should likewise be able to avail themselves of the statutorily-mandated substitute of workers' compensation.</p>
NM	New Mexico	Y	N.M. Stat. Ann. 52-3-3		
NY	New York	Y	N.Y. Workers' Compensation Law § 17	<p>Testa v. Sorrento Restaurant, 10 A.D.2d 133 (N.Y. App. Ct. 1960)</p> <p>Jose Hernandez v. Excel Recycling Corp. (N.Y. App. Ct. 2006)</p> <p>Balbuena v. IDR Realty, 2006 N.Y. LEXIS 273 (N.Y. App. Ct. 2006)</p> <p>Majlinger v. Cassino Contracting Corp. (N.Y. App. Ct. 2006)</p>	<p>Statute includes aliens, but is silent on their legal status.</p> <p><i>Testa</i> ruled that, if illegals were intended to be excluded by statute, they could have been.</p>
NC	North Carolina	Y*	N.C. Gen. Stat. § 97-2(2)	<p>Rivera v. Trapp, 519 S.E.2d 777 (N.C. App. Ct. 1999)</p> <p>Ruiz v. Belk Masonry Co., 559 S.E.2d 249 (N.C. App. Ct. 2002)</p> <p>Gayton v. Gage Carolina Metals, Inc., 560 S.E.2d 870 (N.C. App. Ct. 2002)</p>	<p>The statute expressly includes illegal aliens.</p> <p>* <i>Gayton</i> ruled that disability benefits were payable if the illegal was unable to work because of the injury. However, disability benefits were not payable if the illegal was unable to work due to his illegal status and not the injury.</p>
ND	North Dakota	Y	N.D. Cent. Code § 65-01-02(17)(a)(2)		

OH	Ohio	Y	Ohio Rev. Code § 4123.01(A)(1)(b)	Rajeh v. Steel City Corp., 813 N.E.2d 697 (Ohio App. Ct. 2004)	Statute includes aliens, but is silent on their legal status.  <i>Rajeh</i> ruled that, if illegals were intended to be excluded by statute, they could have been.
OK	Oklahoma	Y	OK Rev. Ann 85A 2-18	Lang v. Landeros, 918 P.2d 404 (Okla. App. Ct. 1996)  Cherokee Industries, Inc. v. CNA Insurance Company, 84 P.3d 798 (Okla. App. Ct. 2004)	
OR	Oregon	Y	OR Rev/ Stat 656.027		
PA	Pennsylvania	Y	77 PA Cons. Stat 22	Reinforced Earth Company v. Workers' Compensation Appeal Board, 749 A.2d 1036, 1038 (Penn. Commw. Ct. 2000)	
RI	Rhode Island	U	RI Gen. Law 28-29-4		
SC	South Carolina	Y	S.C. Code Ann. § 42-1-130		The statute expressly includes illegal workers, but recently introduced legislation has sought to bar benefits for illegals.
SD	South Dakota	U	SD Cod. Laws 62-1-3		
TN	Tennessee	Y	Tenn. Code Ann. § 50-6-102(10)(A)		The statute expressly includes illegal workers.
TX	Texas	Y	Tex. Lab. Code Ann. § 401.011 and	Comercial Standard FIRE and Marine Co. v. Galindo, 484 S.W.2d 635, 637 (Tex. App. Ct.	The statute expressly includes illegal aliens.

			406.092	1972)	
UT	Utah	Y	Utah Code Ann. § 34A-2-104(1)(b)		The statute expressly includes illegal workers.
VT	Vermont	U	VT Stat Ann. 21 - 601(14)		
VA	Virginia	Y	Va. Code Ann. § 65.2-101	Jose Granados v. Windson Development Corp., 257 Va. 509; S.E.2d 290 (Va. Sup. Ct. 1999)	The original WC statutes were silent on aliens, so <i>Granados</i> ruled that illegals were not entitled to benefits because illegals can't enter into contracts of hire, so H.B. 1036 was passed in 2000 to permit benefits. Legislation is currently being considered to once again exclude benefits.
WA	Washington	U	WA Rev. Code 51-08-185		
WV	West Virginia	U	WV Code 23-2-1a		
WI	Wisconsin	Y	Wis. Stat. 102.07(1)		
WY	Wyoming	N	Wyom. Stat. Ann. § 27-14-102(a)(vii)	Felix v. State of Wyoming, 986 P.2d 161 (Wyom. Sup. Ct. 1999)	The statute expressly includes only "legally employed...aliens."  <i>Felix</i> confirmed that illegals were not entitled to benefits.

## Resources:

### Illegal Aliens and Workers' Compensation

- [http://www.aascif.org/public/jan\\_feb\\_mar06/alien.htm](http://www.aascif.org/public/jan_feb_mar06/alien.htm)
- <http://www.aeiclaimslaw.com/Summer2006.pdf>

## Statutes, Regulations and Case Law

- <http://www.workerscompensation.com>

## Undocumented Immigrant Statistics

- <http://pewhispanic.org/files/reports/61.pdf>
- <http://www.uscis.gov/graphics/shared/aboutus/statistics/Illegals.htm>
- <http://www.cis.org/topics/currentnumbers.html>

## Workers Compensation Blogs

- <http://www.workingimmigrants.com>
- <http://www.workerscompinsider.com>

## Other Issues and Resources

- [http://en.wikipedia.org/wiki/Illegal\\_immigration\\_to\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Illegal_immigration_to_the_United_States)
- <https://www.mwl-law.com/wp-content/uploads/2018/02/WORKS-COMP-CLAIMS-BY-UNDOCUMENTED-EMPLOYEES-CHART.pdf>

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