

# THE STANDING PREDICAMENT OF UNDOCUMENTED WORKERS IN PURSUIT OF ERISA SECTION 502 CAUSES OF ACTION

DERICK KALT\*

## TABLE OF CONTENTS

INTRODUCTION . . . . .	221
I. SECTION 502 CLAIMS AND THE FEDERAL LEGAL FRAMEWORK GOVERNING UNDOCUMENTED WORKERS . . . . .	223
A. <i>IRCA Compliance</i> . . . . .	225
B. <i>Disparate Handling of Undocumented Workers’ § 502     Claims</i> . . . . .	230
CONCLUSION . . . . .	234

## INTRODUCTION

In 2023, approximately 8.8 million undocumented workers<sup>1</sup> participated in the U.S. workforce,<sup>2</sup> comprising nearly four percent of the nation’s labor pool.<sup>3</sup> Although undocumented workers are eligible for several of the same fundamental protections as American citizens—such as minimum wage, overtime pay, anti-discrimination measures, and workplace safety

---

\* J.D. Candidate, Chicago-Kent College of Law ‘25; M.S. Rush University; B.S. University of Texas at El Paso. I sincerely thank Professor Diane M. Soubly for her thoughtful review of an early draft and her invaluable guidance and recommendations. © 2025, Derick Kalt.

1. This note uses the terms “undocumented worker,” “illegal alien,” or “unauthorized alien” interchangeably. While some readers may object to this language on political correctness grounds, these terms are utilized in the Immigration and Nationality Act and the Immigration Reform and Control Act. Hence, this note adopts these terms in line with the language of these Acts.

2. *The Impact of Biden’s Open Border on the American Workforce: Hearing Before the Subcomm. on Health, Emp., Lab., and Pensions of the H. Comm. on Educ. and the Workforce*, 118th Cong. 24 (2023) (statement of Steven A. Camarota, Director of Research, Center for Immigration Studies).

3. Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, PEW RSCH. CTR. (Nov. 16, 2023), <https://perma.cc/7ETL-C36B>; Andy J. Semotiuk, *New Report Details Huge Contribution Immigrants are Making to America*, FORBES (Nov. 15, 2023, 07:39 AM), <https://perma.cc/ACB9-TA8B>.

regulations—<sup>4</sup> undocumented workers often accept lower wages and hazardous working conditions due to limited bargaining power with employers.<sup>5</sup> Moreover, many undocumented individuals work well into old age due to ineligibility for Social Security benefits and lack of access to retirement plans.<sup>6</sup>

Undocumented workers also face significant hurdles in accessing health-care, often forcing them to delay or forgo medical treatment entirely.<sup>7</sup> Many lack health insurance coverage because they cannot access employer-sponsored plans and are ineligible for government programs,<sup>8</sup> such as Medicaid;<sup>9</sup> the Children’s Health Insurance Program (CHIP) for their children;<sup>10</sup> marketplace coverage under the Patient Protection and Affordable Care Act (ACA);<sup>11</sup> and Medicare.<sup>12</sup> Those who do have health insurance typically rely upon state-funded programs,<sup>13</sup> such as Medi-Cal, California’s public health insurance program for low-income residents.<sup>14</sup> These disparities in workplace rights and benefits contribute to a palpable tension that pervades labor and employment law, employee benefits regulations, and federal immigration policies. Central to this tension is a dispositive inquiry into the following legal question: Can undocumented workers who participate in benefit plans governed by the Employee Retirement Income Security Act of 1974 (ERISA)<sup>15</sup> assert claims under Section 502, or does their immigration status preclude them from pursuing these legal protections? Such claims may implicate denial of benefits, breaches

---

4. Courts have consistently granted undocumented workers constitutional and statutory standing to pursue various workplace causes of action. *See, e.g.*, *Patel v. Quality Inn S.*, 846 F.2d 700, 706 (11th Cir. 1988) (affirming minimum wage and overtime protection for an undocumented worker under the Fair Labor Standards Act (FLSA)); *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064 n.4 (9th Cir. 2004) (recognizing that Title VII of the Civil Rights Act of 1964 extends protections against discrimination to undocumented workers on the basis on race, sex, national origin, etc.); *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 223 (2d Cir. 2006) (permitting an undocumented worker to recover compensatory damages for a workplace injury). *See also* Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 L. & SOC. INQUIRY 561, 567 (2010) (observing that the National Labor Relations Board (“NLRB”), the Department of Labor (“DOL”), the Equal Employment Opportunity Commission (“EEOC”), and the Occupational Safety and Health Administration (“OSHA”) enforce workplace protections for all workers, irrespective of a worker’s immigration status).

5. Matthew Hall & Emily Greenman, *The Occupational Cost of Being Illegal in the United States: Legal Status, Job Hazards, and Compensating Differentials*, 49 INT’L MIGRATION REV. 406, 410 (2015).

6. *See* Farida Jhabvala Romero, *Without Retirement Options, Many Undocumented Farmworkers Keep Working Into Old Age*, NPR (Mar. 8, 2023, 05:46 PM), <https://perma.cc/3PTF-KU6Z>.

7. *E.g.*, *Key Facts on Health Coverage of Immigrants*, KAISER FAM. FOUND. (Sept. 17, 2023), <https://perma.cc/ZC6J-BGLS>.

8. *Id.*

9. 42 U.S.C. § 1396 *et seq.*

10. *Id.*

11. *Id.* at § 18001 *et seq.*

12. *Id.* at § 1395 *et seq.*

13. KAISER FAM. FOUND., *supra* note 7.

14. As of January 1, 2024, Medi-Cal began extending health insurance coverage to all eligible undocumented immigrants in California. *See* Brenda Fernanda Verano, *California Becomes First State to Offer Health Insurance to all Eligible Undocumented Adults*, USC ANNENBERG CTR. HEALTH JOURNALISM (Jan. 8, 2024), <https://perma.cc/H7U8-F4Y5>.

15. 29 U.S.C. § 1001 *et seq.*

of fiduciary duty, interference with the participants' or beneficiaries' exercise of rights under ERISA, and other statutory violations.<sup>16</sup>

For decades, immigration law and employment law have taken opposing perspectives on undocumented workers.<sup>17</sup> Immigration law often depicts undocumented workers as interlopers and questions their entitlement to benefits reserved for legally authorized workers.<sup>18</sup> Conversely, employment law views undocumented workers as valuable contributors to the national workforce entitled to the same rights and protections afforded to their American citizen counterparts.<sup>19</sup> These contrasting perspectives are reflected in the varying ways federal courts handle cases involving undocumented workers.<sup>20</sup>

This note surveys the legal complexities surrounding ERISA-governed benefits for undocumented workers and the barriers faced when pursuing Section 502 causes of action. It explores the intersection of employee benefits law and immigration law, analyzing the interplay between ERISA, the Immigration Reform and Control Act of 1986 (IRCA),<sup>21</sup> and the Immigration and Nationality Act (INA).<sup>22</sup> Additionally, it highlights the challenges that undocumented workers encounter in federal courts when seeking benefits available to American citizens. This note advocates for a cohesive and consistent approach to address ERISA § 502 claims brought by undocumented workers. To address these complexities, it is necessary to first examine ERISA's civil enforcement mechanism under Section 502, as it establishes the legal basis for determining whether undocumented workers can successfully assert claims to employee benefits.

## I. SECTION 502 CLAIMS AND THE FEDERAL LEGAL FRAMEWORK GOVERNING UNDOCUMENTED WORKERS

ERISA § 502(a) empowers plan participants, beneficiaries, and fiduciaries, as well as the Secretary of Labor, to pursue legal action for statutory violations under ERISA.<sup>23</sup> Section 502 is widely regarded as “one of the essential tools for accomplishing the stated purposes of ERISA” and functions as the exclusive avenue for ERISA-plan participants and beneficiaries to challenge improper processing of benefits claims.<sup>24</sup> Section 502(a) authorizes three

16. *Id.* at §§ 1132(a)(1)(B), 1132(a)(2).

17. Tobias Kuehne, *Immigration and Employment Federalism: State Courts and Workers' Compensation for Unauthorized Workers*, 43 BERKELEY J. EMP. & LAB. L. 415, 417 (2022).

18. *Id.* at 415.

19. *Id.*

20. *Id.*

21. Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986). IRCA is codified, as amended, in scattered sections of tit. 8 of the United States Code.

22. Immigration and Nationality Act, Pub. L. 88-414, 182 Stat. 66 (1952) (codified as amended in scattered sections of 8 U.S.C. §§ 1101 to 1537).

23. 29 U.S.C. § 1132; Nick Oberheiden, *Ultimate Guide to ERISA Section 502*, OBERHEIDEN P.C., <https://perma.cc/KT9J-XXC9> (last visited Mar. 16, 2025).

24. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987).

types of civil enforcement actions.<sup>25</sup> First, Section 502(a)(1)(B) permits plan participants and beneficiaries to sue to recover benefits or to clarify future entitlements under a covered plan.<sup>26</sup> Second, Section 502(a)(2) permits plan participants, beneficiaries, or plan fiduciaries to bring claims against another plan fiduciary for breaching fiduciary duties that cause a loss to the plan, as described in ERISA § 409(a).<sup>27</sup> Third, Section 502(a)(3), referred to as the “catch-all” provision, allows plan participants, beneficiaries, plan fiduciaries, or the Secretary of Labor to initiate legal actions to enjoin any act or practice that violates the terms of a plan and to seek other appropriate equitable relief.<sup>28</sup> This “catch-all” remedy serves as a safety net, providing equitable relief to plaintiffs for injuries caused by violations under ERISA that Section 502 does not adequately remedy.<sup>29</sup>

Courts require both Article III standing and statutory standing for all Section 502 claims.<sup>30</sup> Simply having the statutory right to sue under ERISA does not guarantee satisfying Article III’s injury-in-fact requirement for constitutional standing, nor does it preclude dismissal for lack of prudential standing.<sup>31</sup> Often, standing issues arise because the statutory definitions of who qualifies as a “participant,” a “beneficiary,” and a “fiduciary” appear vague or tautological.<sup>32</sup> For instance, ERISA § 3(7) defines a “participant” as an “employee or former employee,” without specifying who qualifies as an “employee” under the statute. Courts interpret these terms in various complex circumstances through the lens of ERISA’s legislative purpose: enacted to *protect* employees, former employees, and their beneficiaries.<sup>33</sup>

Employers offer benefits, such as health and welfare plans, to their employees for many reasons. These benefits serve as a tool to attract talent, to reduce employee turnover, to maintain a healthy workforce, and to enhance employee productivity and morale.<sup>34</sup> At the core of these benefits lies the

---

25. COLLEEN E. MEDILL, INTRODUCTION TO EMPLOYEE BENEFITS LAW: POLICY AND PRACTICE 523 (6th ed. 2023).

26. *Id.*

27. *Id.* Section 409(a) imposes personal liability on fiduciaries who breach their responsibilities, requiring fiduciaries to compensate the plan for any resulting losses, restore profits gained through misuse of plan assets, and submit to any equitable or remedial relief that the court deems appropriate, including removal as fiduciary.

28. MEDILL, *supra* note 25, at 503.

29. *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996).

30. *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1622 (2020); *Edmonson v. Lincoln Nat’l Life Ins. Co.*, 725 F.3d 406, 419 (3d Cir. 2013).

31. Lauren Lofy, Note, *A New Look at Standing for ERISA Causes of Action in Defined-Benefit Plans*, 64 ARIZ. L. REV. 277, 289 (2022).

32. MEDILL, *supra* note 25, at 504. See also *Griffin v. AT&T Servs., Inc.*, No. 1:22-CV-00701-SEG, 2023 U.S. Dist. LEXIS 77705 (N.D. Ga. Mar. 21, 2023) (dismissing a Section 502 claim after reasoning that the plaintiff healthcare provider lacked standing because he was not a “participant” or “beneficiary” under ERISA).

33. *Shaw v. Delta Air Lines*, 463 U.S. 85, 90 (1983) (“ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans.”). See *Jammal v. Am. Family Ins. Co.*, 914 F.3d 449 (6th Cir. 2019) (observing that an employer’s misclassification of a worker could potentially preclude payment of benefits under ERISA).

34. Chloe Goodshore, *Top 5 Reasons to Offer Employee Benefits*, BUSINESS.ORG (Jan. 18, 2023), <https://perma.cc/UQ7K-CSVS>.

*employee*—the individual plan participant to whom employee benefits law and ERISA accord protections. Without covered employee participants, the foundation of an ERISA § 502 claim crumbles.<sup>35</sup> Thus, exploring how courts grapple with the concept of an “employee” (1) under the IRCA and federal labor law, and (2) the obligations that this concept imposes upon ERISA-covered employers, informs insights into the broader context of employment-related legal frameworks, and de-politicizes the subject of immigration reform.<sup>36</sup>

### A. *IRCA Compliance*

Congress enacted the IRCA to safeguard job opportunities for individuals legally authorized to work in the country, i.e., American citizens and authorized aliens.<sup>37</sup> Employers cannot legally hire unauthorized aliens for employment within the United States.<sup>38</sup> The IRCA prohibits a variety of employment related activities, including hiring, recruiting, or referring an alien for employment, if the employer knows that the alien lacks employment authorization.<sup>39</sup> The IRCA shifts the responsibility of immigration compliance to employers, requiring them to verify the identity and employment eligibility of all prospective workers.<sup>40</sup>

When President Reagan signed the IRCA into law in 1986, he expressed a desire to “remove the incentive for illegal immigration by eliminating the job opportunities which draw illegal aliens” into the country.<sup>41</sup> Thus, Congress developed an employment verification system to deter the employment of aliens not lawfully present in the United States and those lawfully present but lack proper work authorization.<sup>42</sup> The verification system mandates that employers complete an Employment Eligibility Verification Form, known as the Form I-9.<sup>43</sup> This document requires employers hiring for positions within the United States to certify, under penalty of perjury, that they have examined specific documents to confirm a prospective employee’s legal status.<sup>44</sup> These documents must establish both the worker’s identity and employment authorization. Acceptable verification documents include a U.S. passport, resident

---

35. See 29 C.F.R. 2510.3-3(b) (stipulating an “employee benefit plan” requires employee participants).

36. See Mike Allen, *The Immigration Election: Big Issue for Biden, Trump as Rematch Looms*, AXIOS (Jan. 28, 2024), <https://perma.cc/M2L4-PH92> (highlighting immigration as a major focal point of the 2024 presidential election).

37. *Arizona v. United States*, 567 U.S. 387, 404 (2012); *Immigration Reform and Control Act (IRCA)*, B.U. HUM. RES., <https://perma.cc/W9SW-PMYJ> (last visited Mar. 17, 2024).

38. See 8 U.S.C. § 1324a.

39. *Id.* § 1324a(a)(1).

40. See *id.* § 1324a(b).

41. Statement by President Ronald Reagan Upon Signing S. 1200, 22 WEEKLY COMP. PRES. DOC. 1534 (Nov. 10, 1986), reprinted in *Immigration Reform and Control Act*, Pub. L. 99-603, 1986 U.S.C.C. A.N. 5856-1, 5856-1.

42. See 8 U.S.C. § 1324a(b).

43. *Id.*; see also 8 C.F.R. § 274a.2(a)(2).

44. *United States v. Xiang Hui Ye*, 588 F.3d 411, 412 n.1 (7th Cir. 2009).

alien card, Social Security card, driver's license, or other specific government-issued cards with photo IDs.<sup>45</sup>

The IRCA prohibits unauthorized aliens from circumventing the employer verification system by submitting fraudulent documents.<sup>46</sup> Aliens who use, or attempt to use, any "forged, counterfeit, altered, or falsely made document" for purposes of obtaining employment in the United States face fines and criminal prosecution, and courts may also sentence them to imprisonment for up to five years.<sup>47</sup> Without proper work authorization, an unauthorized alien cannot legally remain employed.<sup>48</sup> If an employer unknowingly hires an individual without proper work authorization, or if the individual becomes unauthorized while employed, the employer must discharge the employee upon discovery of the worker's undocumented status.<sup>49</sup>

Employers who neglect to verify employment eligibility and fill out Form I-9s risk civil penalties between \$100 to \$1,000 per violation.<sup>50</sup> The extent of these fines depends on factors such as the company's size, history of past violations, the number of unauthorized workers in the workforce, the severity of the offense, and the employer's good faith.<sup>51</sup> A good faith defense, available for technical or procedural errors, affords employers ten days to rectify logistical issues.<sup>52</sup> However, this defense does not apply in cases where an employer has engaged in a pattern or practice of violations.<sup>53</sup> The government can impose significant criminal penalties on an employer that engages in a pattern or practice of employing unauthorized workers,<sup>54</sup> including fines of up to \$3,000 for each unauthorized alien in the employer's workforce or imprisonment for up to six months.<sup>55</sup>

While neither the IRCA nor the INA explicitly defines the terms "employee" or "employee-employer relationship,"<sup>56</sup> federal immigration law implies that a *bona fide* employment relationship arises only when an individual worker possesses proper work authorization.<sup>57</sup> In contrast, ERISA offers a broader definition, stating that "the term 'employee' means any individual employed by an employer."<sup>58</sup> Not surprisingly, the ambiguous definition of "employee" was brought before the Supreme Court in *Nationwide Mutual Insurance Co. v.*

---

45. See 8 U.S.C. § 1324a(b)(1).

46. *Id.* § 1324c(a).

47. *Id.* § 1324c(a)(2); 18 U.S.C. § 1546(b).

48. 8 U.S.C. § 1324a(a)(1).

49. See *id.* § 1324a(a)(1)-(2).

50. *Id.* § 1324a(e)(5).

51. *Id.*; 8 C.F.R. § 274a.10(b)(2).

52. 8 U.S.C. § 1324a(b)(6)(B).

53. *Id.* § 1324a(b)(6)(C).

54. See *id.* § 1324a(f).

55. *Id.* § 1324a(f)(1).

56. See 8 U.S.C. § 1101 (failing to define the terms "employee" or "employer-employee relationship").

57. See generally 8 U.S.C. § 1324a (prohibiting the employment of unauthorized aliens by making it unlawful to hire, recruit, or refer an unauthorized alien for employment, or to fail to comply with employment verification requirements under 8 U.S.C. § 1324a(b)).

58. 29 U.S.C. § 1002(6).

*Darden*, where the Court criticized ERISA's definition as "completely circular" and unhelpful.<sup>59</sup>

Clearly defining the term "employee" serves as the nexus between employee benefits law and immigration law, as benefits can only be conferred on individuals who legally qualify as employees. Moreover, clarifying ERISA's definition of *employee* determines whether undocumented workers have standing to pursue ERISA § 502 causes of action. Because ERISA fails to clarify the term "employee," the *Darden* Court looked to other federal law and concluded that Congress "intended [the term] to describe . . . [a] relationship as understood by common-law agency doctrine"<sup>60</sup>:

In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the [1] skill required; [2] the source of the instrumentalities and tools; [3] the location of the work; [4] the duration of the relationship between the parties; [5] whether the hiring party has the right to assign additional projects to the hired party; [6] the extent of the hired party's discretion over when and how long to work; [7] the method of payment; [8] the hired party's role in hiring and paying assistants; [9] whether the work is part of the regular business of the hiring party; [10] whether the hiring party is in business; [11] the provision of employee benefits; and [12] the tax treatment of the hired party.<sup>61</sup>

These factors assist courts in determining whether an employee-employer relationship exists.<sup>62</sup> Federal courts have recognized that the Supreme Court did not deem these factors non-exhaustive, exclusive, or dispositive.<sup>63</sup> Notably, courts often overlook a worker's immigration status in this analysis, yet scrutinize that status in other employment law contexts, including discrimination claims under Title VII of the Civil Rights Act of 1964 (Title VII).<sup>64</sup> For instance, in *Egbuna v. Time-Life Libraries*, the Fourth Circuit required eligibility for legal employment as a prerequisite for pursuing relief under Title VII, in part because the court wished to avoid legitimizing an illegal employment relationship.<sup>65</sup> Similarly, the Internal Revenue Code<sup>66</sup> prohibits states from granting unemployment compensation to illegal aliens,<sup>67</sup> a

---

59. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992).

60. *Id.* at 322–23.

61. *Id.* at 323–24 (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751–52 (1989)).

62. *See Reid*, 490 U.S. at 751–52; *Darden*, 503 U.S. at 323–24.

63. *Berger Transfer & Storage v. Cent. States, Se. & Sw. Areas Pension Fund*, 85 F.3d 1374, 1379 (8th Cir. 1996) (referencing *Darden*, 503 U.S. at 324).

64. 42 U.S.C. § 2000e.

65. *Egbuna v. Time-Life Librs., Inc.*, 153 F.3d 184, 187 (4th Cir. 1998).

66. 26 U.S.C. § 1.

67. 26 U.S.C. § 3304(a)(14).

prohibition that also highlights the significance of immigration status in employment matters. Immigration status has also played a pivotal role in two landmark Supreme Court cases involving the intersection of labor and employment rights concerning unauthorized workers.

*Sure-Tan, Inc. v. NLRB* marked the Supreme Court's first decision addressing the legal status of undocumented workers under federal labor law.<sup>68</sup> In a 7–2 opinion authored by Justice O'Connor, the Court deemed undocumented workers "employees" under the National Labor Relations Act (NLRA).<sup>69</sup> In *Sure-Tan*, an employer reported six of its undocumented workers to the INS in retaliation for having voted in favor of a union.<sup>70</sup> The Court affirmed the Seventh Circuit's conclusion that the employer's actions amounted to unlawful labor practices that violated NLRA,<sup>71</sup> but subsequently found that the workers could not claim backpay otherwise owed to them "during any period when they were not lawfully entitled to be present and employed in the United States."<sup>72</sup>

Despite recognizing undocumented workers as "employees" under the NLRA, *Sure-Tan* predates the IRCA's passage. When the Court decided *Sure-Tan*, the INA did not criminalize the employment of illegal aliens.<sup>73</sup> Further, the Court noted that the employment of illegal aliens seemed only a "peripheral concern" of the INA.<sup>74</sup> After Congress enacted the IRCA two years later, the Court effectively foreclosed the National Labor Relations Board (NLRB) from awarding backpay to undocumented aliens who lacked legal authorization to work in the United States. The Court, in *Hoffman Plastic Compounds v. NLRB*<sup>75</sup> determined that:

[u]nder the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations. The Board asks that we overlook this fact and allow it to award backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud. We find, however, that awarding backpay

---

68. 467 U.S. 883, 884 (1984).

69. *Id.* at 892 ("Since undocumented aliens are not among the few groups of workers expressly exempted by Congress [under the NLRA], they plainly come within the broad statutory definition of 'employee.'").

70. *Id.* at 886–87.

71. National Labor Relations Act of 1947, 29 U.S.C. §§ 151–69.

72. *Sure-Tan*, 467 U.S. at 903.

73. *Id.* at 893 ("Since the employment relationship between an employer and an undocumented alien is hence not illegal under the INA, there is no reason to conclude that application of the NLRA to employment practices affecting such aliens would necessarily conflict with the terms of the INA.").

74. *Id.* at 892 (quoting *De Canas v. Bica*, 424 U.S. 351, 359 (1976)).

75. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 140 (2002).

to illegal aliens runs counter to policies underlying IRCA, policies the Board has no authority to enforce or administer.<sup>76</sup>

Courts have grappled with defining *Hoffman Plastic*'s boundaries across various legal contexts, spanning state workers' compensation programs, tort liability, anti-discrimination laws, and the Fair Labor Standards Act<sup>77</sup> (FLSA).<sup>78</sup> Courts interpreting *Hoffman Plastic* have either distinguished it or limited its application to cases involving lost earnings, especially in tort situations.<sup>79</sup> Some courts also refuse to follow the holding in *Hoffman Plastic* on state law grounds.<sup>80</sup> Nevertheless, *Hoffman Plastic* remains significant and may potentially impact decisions on whether undocumented immigrants have standing to pursue ERISA § 502 claims. The Court's concerns about potential repercussions of granting remedies to illegal aliens suggest that it might "condone prior violations of the immigration laws, and encourage future violations" and underscores *Hoffman Plastic*'s enduring relevance.<sup>81</sup>

Observers argue that *Hoffman Plastic* demonstrates how immigration policies can take precedence over labor protections.<sup>82</sup> This conflict raises two questions: (1) Does allowing an undocumented worker to bring a Section 502 claim contradict congressional intent under the IRCA by encouraging unauthorized employment? (2) Does denying these workers access to employer-promised benefits undermine ERISA's fundamental purpose?<sup>83</sup>

The IRCA's strict employment verification system further complicates the question of whether undocumented workers qualify as "employees" under ERISA—a dispositive threshold issue that directly affects their ability to establish standing for Section 502 claims. This ambiguity not only creates legal barriers for undocumented workers but also places courts in the difficult position of reconciling two statutes with seemingly conflicting policy goals: IRCA, which aims to deter employment for unauthorized workers, and ERISA, which

76. *Id.* at 148–49. *But cf.* Trustees of the Pavers v. M.C. Landscape Grp., Inc., No. 12CV834CBVMS, 2016 WL 1238233, at \*2 (E.D.N.Y. Mar. 29, 2016) (concluding that IRCA does not bar an undocumented worker from recovering unpaid ERISA contributions for work already performed, likening such recovery to awards under the FLSA and distinguishing it from impermissible "post-termination backpay" awards under the NLRA for unperformed work).

77. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–19.

78. Christopher Ho & Jennifer C. Chang, *Drawing the Line After Hoffman Plastic Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOEFTRA LAB. & EMP. L.J. 473, 496–97 (2005).

79. For tort cases limiting *Hoffman Plastic*, see *id.* at 497 n. 108 (collecting cases).

80. See, e.g., *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324, 331 (Minn. 2003) (reasoning that the determination of whether an unauthorized alien should be entitled to benefits based on their immigration status is a matter solely for the state legislature). See also *Madeira v. Affordable Hous. Found., Inc.*, 315 F. Supp. 2d 504, 507 (S.D.N.Y. 2004) (permitting an alien's claim for relief to proceed because the claim was rooted of New York Labor Law, not federal law).

81. See *Hoffman Plastic*, 535 U.S. at 140.

82. See, e.g., Oliver T. Beatty, Comment, *Workers' Compensation and Hoffman Plastic: Pandora's Undocumented Box*, 55 ST. LOUIS U. L.J. 1211, 1213 (2011).

83. See *Aetna Health Inc. v. Davila*, 542 U.S. 200, 204 (2004) ("If a participant or beneficiary believes that benefits promised to him under the terms of [a benefit] plan are not provided, he can bring suit seeking provision of those benefits.").

seeks to safeguard employee benefits. As courts struggle to navigate these tensions, conflicting judicial interpretations reflect deeper uncertainty about how immigration status should factor into the enforcement of labor and benefits protections under federal law.

### B. *Disparate Handling of Undocumented Workers' § 502 Claims*

When they address the rights of undocumented workers, federal and state laws rely on different conceptual and normative frameworks that propose divergent policies regarding whether undocumented workers should receive equal workplace benefits and protections as their American citizen counterparts.<sup>84</sup> Generally, state law affords undocumented workers more robust protections, rejecting the federal posture that portrays undocumented workers as illegal entrants who tarnish and undermine the national labor market.<sup>85</sup> This tension between federal immigration policy and state labor and employment law informs *Bay Area Roofers Health v. Sun Life Assurance Company*,<sup>86</sup> in which the Northern District Court of California grappled with conflicting Californian state law, Section 502 causes of action, and the IRCA.

In *Bay Area Roofers*, Sun Life Assurance Company (Sun Life), the defendant stop-loss insurance provider, refused to reimburse the Bay Area Roofers Health and Welfare Trust (“the Trust”) for health care claims made on behalf of a roofing employee’s two minor dependents.<sup>87</sup> The Trust had purchased a stop-loss insurance policy from Sun Life to mitigate the costs associated with catastrophic health care expenses.<sup>88</sup> However, Sun Life rejected reimbursement claims from the Trust’s third-party administrator (TPA) because the original claimant, whom the court identified as Participant X, lacked a valid Social Security Number (SSN) and Sun Life deemed him (and therefore his dependents) ineligible for coverage as an “employee” under the stop loss policy.<sup>89</sup> Sun Life argued that, since Participant X had obtained his employment fraudulently, he was not authorized to work as an employee in the United States; thus, Sun Life properly precluded him from employee coverage under the policy.<sup>90</sup> The Trust brought suit against Sun Life after the insurer denied the Trust’s claims for \$408,841.59.<sup>91</sup>

The Trust brought four causes of action against Sun Life, including breach of contract, breach of the covenant of good faith and fair dealing, violations of the California Business and Professions Code §§ 17200 *et seq.*, and fiduciary breach under ERISA § 502(a)(3)(B)(ii), ERISA’s catch-all provision.<sup>92</sup>

---

84. Kuehne, *supra* note, 17 at 415.

85. *Id.* at 416–17.

86. *Bay Area Roofers Health v. Sun Life Assur. Co.*, 73 F. Supp. 3d 1154, 1161–70 (N.D. Cal. 2014).

87. *Id.* at 1156.

88. *Id.* at 1157.

89. *Id.*

90. *Id.*

91. *Id.* at 1158.

92. *Id.* at 1157.

The Trust contended that the court should grant it partial summary judgment on its breach of contract claim because Participant X qualified as an “employee” under California law.<sup>93</sup> The Trust also argued that Participant X had met all of the eligibility criteria under the Trust’s plan, irrespective of his immigration status, by working the requisite number of hours, timely enrolling his dependents, seeking reimbursement for qualifying healthcare services, and submitting proper claims.<sup>94</sup> It further contended that Sun Life had breached its contractual obligations to the Trust by failing to reimburse the Trust’s covered expenditures under the insurance policy and that the IRCA does not preempt California law.<sup>95</sup>

In weighing the Trust’s motion for partial summary judgment, the federal district court found that Sun Life’s failure to reimburse the Trust for expenses of Participant X’s dependents that the Trust paid violated fundamental tenets of state insurance and contract law.<sup>96</sup> Specifically, the court emphasized that California law extends the rights and benefits offered to employees by private employers, with the exception of back pay, available to *all* employees—including undocumented workers.<sup>97</sup> The court held that the plain and ordinary meaning of the term “employee” in Sun Life’s policy included undocumented workers.<sup>98</sup> Under that reading, the stop-loss policy obligated Sun Life to reimburse the Trust in the amount claimed, plus interest.<sup>99</sup>

The district court granted partial summary judgment in favor of the Trust on its breach of contract claim but denied the Trust’s request for a declaratory judgment under ERISA § 502(a)(3).<sup>100</sup> Because the Trust’s stop-loss policy fell outside ERISA’s purview, California law governed the policy for purposes of the breach of contract claim. The Trust sought a judgment against Sun Life to enforce the terms of the benefit plan under § 502(a)(3)(B)(ii) and to declare that: (1) Sun Life lacked the authority to determine eligibility for benefits for plan participants; (2) only the Trust’s TPA was authorized to determine Participant X’s eligibility for plan benefits; (3) the Trust’s TPA had properly exercised its discretion in determining Participant X’s eligibility, regardless of whether he had a matching SSN or a particular immigration status; and (4) that all expenses paid on behalf of Participant X’s dependents were properly paid under the Trust’s employee welfare benefit plan.<sup>101</sup>

In denying the Trust’s request for declaratory judgment, the district court first reasoned that the Trust lacked Article III standing under federal law to

---

93. *Id.* at 1162.

94. *Id.* at 1166.

95. *See id.* at 1166–67.

96. *Id.* at 1167–68.

97. *Id.* at 1166–67; *see also* CAL. GOVT. CODE § 7285(a) (Deering, Lexis+ through 2024 Reg. Sess. Ch. 1) (“All protections, rights, and remedies under state law . . . are available to all individuals regardless of immigration status . . .”).

98. *Bay Area Roofers*, 73 F. Supp. 3d at 1168.

99. *Id.* at 1168.

100. *Id.* at 1168.

101. *Id.* at 1168–69.

bring the ERISA “catch-all” claim because the Trust failed to allege a cognizable injury under ERISA traceable to Sun Life’s actions. Therefore, the court determined that issuing a declaratory judgment would amount to providing an advisory opinion without an actual case or controversy.<sup>102</sup> As a result, the court refrained from affirming that any future or hypothetical payouts made on behalf of undocumented workers by the Trust would comply with the stop-loss insurance policy.<sup>103</sup>

In short, the court’s refusal to issue a declaratory judgment and its ruling that the Trust lacked standing to pursue an ERISA § 502(a)(3)(B)(ii) cause of action left unresolved the issue of whether undocumented workers are considered “employees” under the Trust’s plan, at least within the legal framework of ERISA.

In contrast, the Fifth Circuit has taken a more direct approach when faced with similar circumstances involving undocumented workers and the payout of certain health and welfare benefits.<sup>104</sup> In *Garcia v. American United Life Insurance Company*, the Fifth Circuit ruled that an undocumented alien who provided fraudulent work authorization to his employer remained ineligible for coverage under a group insurance policy.<sup>105</sup>

The controversy in *Garcia* stemmed from a denial of death benefits under a life insurance policy, where the decedent included on his Group Enrollment Form a SSN that did not belong to him.<sup>106</sup> The insurer, American United Life Insurance Company (AUL), launched an investigation into the decedent’s eligibility after his beneficiary filed a claim for benefits.<sup>107</sup> AUL discovered the insured’s SSN, listed on his enrollment form, Form I-9, and death certificate, belonged to a woman who had died over a decade earlier.<sup>108</sup> Despite the beneficiary’s appeal, AUL upheld its denial after verification from the Social Security Administration (SSA) and the Department of Homeland Security (DHS) confirmed the mismatched SSN.<sup>109</sup> The beneficiary’s lawsuit under ERISA § 502(a) did not withstand AUL’s cross motion for summary judgment before the district court.

On appeal, the beneficiary argued that ERISA did not preempt Texas law governing the rescission of an insurance policy.<sup>110</sup> However, the court dismissed her contention and concluded that preemption was not at issue because she did not raise any state law claims.<sup>111</sup> The beneficiary further argued that the district court erred in finding that the decedent had made a “material” misrepresentation justifying AUL’s denial of her claim.<sup>112</sup> The

---

102. *Id.* at 1169.

103. *See id.* at 1169.

104. *See Garcia v. Am. United Life Ins. Co.*, 422 F. App’x 306, 307 (5th Cir. 2011) (per curiam).

105. *Id.*

106. *Id.* at 308.

107. *Id.* at 307.

108. *Id.* at 308.

109. *Id.*

110. *Id.* at 309.

111. *Id.*

112. *Id.* at 308.

Fifth Circuit affirmed the district court's finding, reasoning that providing a false SSN on an application constituted a material misrepresentation because it prevented AUL from fully assessing the underwriting risk involved in issuing the decedent a policy.<sup>113</sup> The court explained that insurance companies rely on an individual's identity, including the SSN, to gather data used for evaluating an applicant's health risks, financial and moral fitness, and the probability of submitting fraudulent claims.<sup>114</sup> Without a proper SSN, insurance companies cannot accurately assess whether they can take on the business risk of insuring a particular applicant.<sup>115</sup>

When interpreting ERISA, federal courts typically rely on general contract law principles, unless they conflict with federal labor policy.<sup>116</sup> Both *Bay Area Roofers* and *Garcia* applied a contract law framework to assess whether certain beneficiaries were entitled to remedies under ERISA-governed benefit plans albeit reaching different conclusions. In *Bay Area Roofers*, the court approached the case through a breach of contract lens, avoiding the plaintiff's request for declaratory relief under ERISA § 502.<sup>117</sup> Relying on California labor law and faced with a stop-loss policy outside of ERISA's ambit, the Northern District Court of California classified an undocumented worker as an "employee," asserting that immigration status and the IRCA did not necessarily hinder access to health insurance benefits.<sup>118</sup> Meanwhile, in *Garcia*, the Fifth Circuit addressed an ERISA § 502 claim under a similar contract law framework, absent any accompanying state law claims. However, the Fifth Circuit diverged from the *Bay Area Roofers* decision, finding that an undocumented worker who provided a false SSN committed a material misrepresentation, barring coverage under the plan.<sup>119</sup>

In passing ERISA, Congress sought to encourage and to protect systematic benefit payments to participants and beneficiaries.<sup>120</sup> However, as *Bay Area Roofers* and *Garcia* demonstrate, plan administrators may face challenges in interpreting plan definitions for determining undocumented workers' "employee" status or for ascertaining whether employee benefit plan agreements with undocumented workers are valid. This uncertainty prompts plan administrators to reassess risk management strategies, particularly for undocumented workers enrolled in benefit plans. This is especially important given courts differ on whether such workers have standing to pursue ERISA § 502 claims without asserting breach of contract or state law claims. Such disparities may lead to

---

113. *Id.* at 312–13.

114. *Id.* at 313.

115. *Id.*

116. *See* M&G Polymers USA, LLC v. Tackett, 574 U.S. 427, 435 (2015).

117. *Bay Area Roofers Health v. Sun Life Assur. Co.*, 73 F. Supp. 3d 1154, 1161–70 (2014).

118. *Id.* at 1168.

119. *Garcia*, 422 F. App'x at 313. *Contra* McKennan v. Meadowvale Dairy Emp. Ben. Plan, 374 F. Supp. 3d 771, 776, 788 (N.D. Iowa 2019), *overruled on other grounds* by 973 F.3d 805 (8th Cir. 2020) (declining to find a material misrepresentation in an ERISA § 502 cause of action where an undocumented alien provided his employer with a false SSN to obtain employment).

120. *See* Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9 (1987).

inconsistent payouts and legal exposure, depending upon jurisdiction and venue in which a plaintiff plan or plan administrator files a lawsuit itself, often specified in an insurance policy.<sup>121</sup>

#### CONCLUSION

Given employee benefit plans hinge on the existence of an employer-employee relationship,<sup>122</sup> defining who qualifies as an “employee” under ERISA can significantly impact the viability of an ERISA § 502 cause of action. Under ERISA § 502, only plan participants, beneficiaries, or fiduciaries have standing to bring claims under the ERISA § 502(a)(1)–(3).<sup>123</sup> This list is exclusive, and any entity not otherwise enumerated in those subsections of Section 502(a) lacks statutory standing to bring an action under those subsections.<sup>124</sup> Not even the ERISA plan itself has standing to bring an action for benefits due or for breach of fiduciary duties imposed under ERISA § 502(a)(1)–(3).<sup>125</sup> Thus, undocumented workers face a substantial hurdle in establishing standing when they attempt to bring claims under ERISA § 502(a)(1)–(3) as plan participants or beneficiaries. This standing hurdle exacerbates the systemic challenges undocumented workers already face in the domestic workforce—such as unsafe working conditions, low wages, and the risk of employer retaliation<sup>126</sup>—let alone their limited access to employer-provided retirement plans and health insurance.

Typically, undocumented workers must show that they are participants of a qualified ERISA plan to assert a cause of action against a plan fiduciary or administrator. ERISA defines a “participant” as any *employee* who is eligible to receive a benefit from an employee benefit plan.<sup>127</sup> Some courts have found that an employee-employer relationship requires an individual to possess proper work authorization in compliance with the IRCA. Other courts have found that undocumented workers have standing to pursue an ERISA cause of action because state law affords them greater protection, even if they had presented incorrect information or tendered fraudulent documents in their Form I-9. Further, courts may not find material misrepresentations sufficient to rescind a benefits plan if an undocumented worker provides fraudulent documentation during the employment verification step preceding their

---

121. See *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001) (noting that uniform administration of ERISA benefits becomes complex when plans are subject to varying legal obligations across different states).

122. *Meredith v. Time Ins. Co.*, 980 F.2d 352, 354 (5th Cir. 1993).

123. The Secretary of Labor is authorized to sue under various subsections of ERISA § 502. However, actions by the Secretary are beyond the scope of this note, as is Section 510 (protecting employees in benefit plans from discrimination or retaliation by employers for exercising their rights under ERISA).

124. *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110, 121 (2d Cir. 2002).

125. *Pressroom Unions-Printers League Income Sec. Fund v. Cont'l Assurance Co.*, 700 F.2d 889, 892–93 (2d Cir. 1983).

126. Ozment Law, *Undocumented Immigrants Often Face Injustices on the Job*, <https://perma.cc/ATR2-HWKR> (last visited Mar. 17, 2025).

127. See 29 U.S.C. § 1002(7).

hiring. The divergent outcomes across jurisdictions highlight the complex interplay of contract law, labor law, and immigration law in determining undocumented workers' standing to pursue ERISA claims.

This judicial disparity undermines the uniformity and efficiency of plan administration, particularly in processing claims and distributing benefits.<sup>128</sup> Therefore, Congress and enforcing agencies must clarify the interplay of these statutes and adopt procedural rules to guide courts in adjudicating claims involving undocumented workers. Such action is essential to resolve this ambiguity and ensure equitable treatment and consistent application of ERISA principles across jurisdictions.

---

128. See *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300 (2009) (discussing the importance of administering a uniform ERISA scheme).