

Undocumented Workers and Prevailing Wage Claims

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As we welcome the agriculture industry back into full swing in the Salinas Valley, local employers will be hiring many new workers. Federal law requires that employers verify that each new hire is authorized to work in the United States. Employers do this by reviewing documents presented by the employees that establish their identity and authorization. The recent California appellate court case *Reyes v. Van Elk, Ltd.* emphasizes the importance of confirming that all employees are authorized to work here.

Jose Reyes, Francisco Reyes, Jose Perez and Carlos Flores (the plaintiffs) performed welding-related work for Van Elk, Ltd. on projects they claimed were public works projects for which they had to be paid prevailing wages. The plaintiffs sued Van Elk for failure to pay prevailing wages.

During discovery, Van Elk received responses from plaintiffs in which they confirmed that they were not born in the United States and they had no Social Security numbers. The plaintiffs refused to answer questions regarding citizenship, legal residency status, documented worker status and work visa information.

Van Elk asked the trial court to grant judgment in its favor, arguing that since the plaintiffs were undocumented workers, they were not authorized to work in the United States and should not have standing to sue them. The plaintiffs responded that California Labor Code section 1171.5 states that even undocumented workers may challenge their employers regarding wage and hour issues.

Van Elk argued that federal law preempted the California law, so it did not matter what the California Labor Code said—the plaintiffs were not authorized workers so they did not have standing to sue Van Elk. The trial court agreed with Van Elk, stating that the plaintiffs had no standing to sue Van Elk, the California law was preempted by the federal law, and the plaintiffs were all undocumented.

The plaintiffs appealed the trial court's decision. The Second District California Court of Appeal reversed the trial court's decision. The court explained that earned by unpaid salary or wages are vested property rights, and that noncitizens are guaranteed the same property rights as citizens. The court noted that the federal law prohibiting the employment of undocumented workers is meant to control illegal immigration, but allowing employers to pay undocumented workers less than prevailing wages would encourage employers to employ undocumented workers and would thus encourage illegal

immigration. Accordingly, the court held that the plaintiffs could sue for the prevailing wages.

Employers should note that the government is now stridently enforcing the federal law prohibiting the employment of undocumented workers, and employers should confirm that all new hires provide the appropriate documentation.