

# Building Understanding Creating Change

## Defending the Rights of Immigrant Workers

What Union Members Should Know About . . .

### Legal Rights of Immigrants

Immigrant workers face many of the same problems that all workers in the United States encounter: employer interference with their rights to improve their wages and working conditions through unionization, discrimination and abuse at the hands of unscrupulous employers, unsafe working conditions and the enduring struggle for dignity and respect, both as workers and human beings.

#### Laws that protect workers

Fortunately, our nation's labor laws generally have been determined to protect workers regardless of their immigration status. Citizens, legal permanent residents and undocumented workers alike enjoy virtually the same workplace rights under such key laws as the National Labor Relations Act (NLRA), Railway Labor Act (RLA), Occupational Safety and Health Act (OSHA), Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 and the Fair Labor Standards Act (FLSA). For example, the FLSA generally requires employers to pay minimum wage and overtime to workers. Similarly, employers' obligations under the OSHA extend to everyone in the workplace, as do their obligations under Title VII to provide a workplace free of discrimination based on race, gender, religion and ethnicity.

Permanent residents and undocumented workers also have a right under the law to form and join unions, engage in collective bargaining and participate in other forms of concerted activity protected by the NLRA. In fact, much of the recent growth in union membership has occurred because of the organizing

efforts of immigrants—both legal permanent residents and undocumented workers.

The union movement embraces all workers regardless of their citizenship. Not only is this consistent with the principles on which unions were founded, but it also is our legal obligation.

#### Particular challenges of undocumented workers

Although undocumented workers have rights, they face particular challenges when they try to exercise their rights. The law prohibits employers from retaliating against anyone who asserts a workplace right—whether to join or form a union, obtain the minimum wage or overtime pay or complain about unsafe working conditions or discrimination. Unfortunately, it is all too common for employers to use the threat of U.S. Immigration and Naturalization Service (INS) proceedings—culminating in deportation—to discourage undocumented workers from asserting their rights. Whether the threat is carried out or not, it stands as a barrier to asserting rights. In addition, undocumented workers often are reluctant to cooperate with such federal agencies as the National Labor Relations Board (NLRB), the Wage and Hour Division of the U.S. Department of Labor and the Equal Employment Opportunity Commission (EEOC) when these agencies try to conduct investigations into employer illegal practices. In many instances, undocumented workers are afraid of revealing their undocumented status to the government.

Any worker who has been fired for exercising his or her rights may be subject to inordinate delays in enforcement. But undocumented workers face an additional obstacle: while they are entitled to back pay for any period of unlawful termination, they may not be entitled to reinstatement unless they can prove their work status has changed.

Employers that retaliate against and exploit undocumented workers undermine the rights of all workers. Not only does such exploitation and retaliation erode the right of all workers to organize and bargain, it weakens workers' rights to have a say in their workplaces in general. The most effective way to counter the strength and financial resources of exploitative employers is through a strong union movement that welcomes all workers, regardless of their sexual orientation, whether they have a disability, their race, gender, citizenship or immigration status or where they were born.

## **The union movement's commitment to protecting workers' rights**

The AFL-CIO is committed to protecting the rights of all workers. The union movement fosters and promotes the freedom to join a union. The federation is working for new laws that protect immigrant workers from retaliation and other forms of discrimination. In addition, the AFL-CIO has allied with unions worldwide to ensure that workers around the world, regardless of immigration status, are afforded the core labor protections as outlined by the International Labor Organization (ILO), including the right to organize and bargain collectively, to refuse forced labor, to reject child labor and to work free from discrimination.

Immigrants have legal rights in the workplace, but those rights are as fragile as every worker's rights. Our rights only exist when we organize, stand up to employers and stand together.