

# The Effect of Immigration Status on Personal Injury Claims in North Carolina

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**Sadly, accidents happen, and individuals are injured across our state in all sorts of different ways.**

When the victim is a recent immigrant to the United States, they sometimes have questions about how immigration status affects their ability to pursue a claim, including whether non-citizens have the same basic rights in personal injury cases. Fortunately, immigrants—both documented and undocumented—have complete rights to pursue personal injury claims in North Carolina, including to litigate such cases if necessary.

## The Role of Immigration Status

If an injured party is a non-citizen with documented (i.e., "legal") immigration status, there is no effect whatsoever on their ability to pursue a personal injury claim. They can pursue a personal injury claim in the same way as any other injured party in North Carolina. The same essentially is true if someone is an undocumented immigrant. Undocumented immigrants have the right to access the North Carolina court system for relief in personal injury cases. For instance, the United States Supreme Court has held that due process protections apply to all persons in the United States, "whether their presence is lawful, unlawful, temporary, or permanent." This right allows all persons who are injured by another to pursue an insurance claim and even litigate their case, if necessary.

Of course, there may be factual or practical issues in pursuing a case on behalf of an undocumented immigrant client or family. If someone is an undocumented immigrant, they may have valid concerns about pursuing a "public" lawsuit and having opposing attorneys investigate their immigration status. It is important for these individuals to speak to their attorney about how to handle this process. Still, many injury claims never end up in court as a lawsuit. Further, even if a lawsuit is necessary, there typically are ways to navigate these concerns and pursue justice for the injured party.

There is some possibility that certain elements of damages may have to be considered in a different manner when pursuing a claim on behalf of an undocumented immigrant. In particular, if future lost wages are part of the involved damages, there may need to be factual analysis determining the likely or expected time the individual plans to remain in the United States. Whether or not the injured party has a right to "legally" work in the future may be an issue with calculating those lost wages. However, this is only one part of the damages analysis. Compensation for past medical expenses, pain and suffering, and other damages can be pursued in the same manner as any other case.

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Still, if an immigrant is undocumented, the insurance company or defense attorney for the at-fault party may try to suggest that they should not receive full compensation, particularly if there is a jury trial. Such arguments are typically improper. And there are ways that the injured party's attorney can seek to exclude such evidence of immigration status, including through a process called "motion in limine."

## **Liability and Negligence**

Just like any other personal injury claim, the basis for a claim for an injured party who is a non-U.S. citizen typically will start with a "negligence" analysis. Under our civil legal system, everyone has a duty to act with reasonable care in all their actions. That means we all must act as a "reasonably prudent person." When someone fails to act with reasonable care, and their actions cause injury, that party is deemed to be negligent. Unless a legal defense applies, a negligent party is liable for the damages their negligence causes. Examples range from a negligent driver causing a wreck, to a property owner failing to correct or warn of an unsafe condition that hurts a visitor, to medical malpractice.

Once negligence is established, the negligent party typically is liable for any damages their negligence caused. There are some potential defenses. For instance, North Carolina is one of only a few states that continue to recognize the doctrine of "contributory negligence." That means that if the injured party negligently contributed to the incident in the slightest manner—even 1%—they cannot recover at all. There are exceptions to this rule, such as the doctrine of "last clear chance," or possibly where the other party is "grossly negligent."

## **The Elements of Damages**

If there is liability, the next step is to determine what damages, if any, are owed as a result of the negligence and consequent injury.

The aim of awarding damages is to make the injured person "whole" under the law. When dealing with serious personal injuries or death, no amount of money can ever fully compensate someone or their family. Still, the only mechanism our civil legal system has to compensate an injured party is through the payment of money. So, the payment of money is how North Carolina law compensates for bodily injury and death to "balance the harm" incurred. The negligent party or their insurance company, if applicable, is responsible for paying these damages.

Multiple types of damages may apply. First, total recoverable medical costs are any amounts actually paid by an injured person or someone on their behalf (including their health insurance), as well as any medical bills that are still outstanding. Any future medical costs associated with ongoing care also are recoverable.

There are several other types of damages. Again, for example, one may be entitled to lost wages or a claim for diminished future earning capacity due to ongoing health problems.

There also are non-economic damages meant to compensate for pain and suffering, scarring or disfigurement, loss of use of part of your body, or the permanency associated with any continuing injuries. Again, money cannot fix these situations. Still, it is up to the parties, a judge, or a jury to determine a reasonable amount of compensation for these damages based on the specific facts of the case.

## Conclusion

When injuries happen as a result of another party's negligence, our legal system assigns responsibility to that negligent party. So, the injured person must turn to that negligent party, or that party's insurance company, for compensation. Like other injured parties, recent immigrants to the United States—whether documented or undocumented—have full rights to pursue these claims in North Carolina. And, as in other complex legal matters, the best course of action typically is to consult an attorney to help evaluate any potential claim.

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