

Unauthorized Aliens Are 'Employees' Under Fair Labor Standards Act (FLSA)

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While the contentious immigration debate seems stalled in Congress, employers face challenges regarding job applicants and employees who are not authorized to work in the United States under the Immigration Reform and Control Act (IRCA). The IRCA makes it unlawful for employers to hire aliens who are not legally authorized to work in the United States. The **Fair Labor Standards Act (FLSA)** requires, among other things, employers to pay employees a minimum hourly wage plus overtime.

In recent years, one key question courts have faced is whether unauthorized aliens who work in the United States should be considered employees under the FLSA and therefore be entitled to the rights and protections guaranteed by the Act (and other federal and state employment laws), despite the fact that they are not legally authorized to work. In a recent case, the U.S. 8th Circuit Court of Appeals (whose rulings apply to all Missouri employers) joined the 11th Circuit (which covers Florida, Georgia, and Alabama) in ruling that unauthorized workers are employees under the FLSA and are therefore entitled to minimum wage and overtime pay just like other employees who are covered by the Act. The 8th Circuit held that aliens can recover unpaid wages under the FLSA regardless of whether they are authorized to work.

Background

Between 2007 and 2010, the Jerusalem Café in Kansas City employed Elmer Lucas and five other workers, none of whom were authorized to work in the United States under the IRCA. During that period, most of the workers were paid less than the minimum wage, and none received overtime pay for hours worked in excess of 40 per workweek as required by the FLSA. Instead, the café's owner, Farid Azzeh, and manager, Adel Alazzeh, paid the workers fixed weekly sums in cash regardless of the number of hours they worked.

In January 2010, one of the employees, Feliciano Macario, called police and reported that Azzeh's nephew struck him. Macario claimed that Azzeh was afraid the police would discover that he was employing illegal aliens and that Azzeh offered him \$500 to drop the charges and instructed him to

return to work. Macario refused and was discharged. Two months later, the five other employees were discharged because they refused to falsify employment applications to make it appear that they had not worked for the café before March 2010.

Read more...*Missouri Employment Law Letter* ([PDF](#))

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