

# Client Alert

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## ILLEGAL IMMIGRANTS AND WORKERS' COMPENSATION

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The Center for Immigration Studies estimates about five percent of workers in the U.S. are illegal immigrants. In some industries, such as food service and construction, it's much higher – 18 percent for construction. While IRCA, the Immigration Reform and Control Act, does not prohibit an illegal immigrant from seeking employment, it does prohibit an employer from knowingly employing undocumented workers in the United States. The best way for an employer to avoid hiring an undocumented worker is to always properly and carefully verify a job applicant's documents before hiring, through the Form I-9. The I-9 is designed to verify an employee's authorization to work, and the failure to properly complete I-9s could result in federal fines and governmental audits.

Over the last decade, questions have arisen as to whether an injured undocumented worker that manages to slip onto a payroll should be allowed to receive workers' compensation benefits, if they could not legally be hired by the employer. In general, most courts, including Georgia's, have held that undocumented workers are entitled to workers' compensation benefits after an industrial accident. However, the right of these undocumented workers to continue receiving income benefits is not without limits.

Once the undocumented worker is capable of light duty work, the Employer/Insurer should immediately make a light duty job offer under O.C.G.A. § 34-9-240 contingent on the Claimant bringing "documents which prove he can work legally in this country." If the Claimant is unable to provide the required documentation, the Employer/Insurer would argue an unjustifiable refusal of suitable light duty employment. That refusal would not be because of his work injury or restrictions, but would be due to his undocumented status. As the law stands, this would provide a mechanism for suspending benefits under the Act.

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### ABOUT HBSS

Hall Booth Smith & Slover is a full-service and diverse law firm with eight regional offices in Georgia, Tennessee and South Carolina. The firm's practice areas are focused and diverse, and include complex civil defense litigation, employment, mass torts, medical malpractice, healthcare, regulatory and governmental matters, and international law.

Whether it's a matter of litigation taking place in the courtroom or negotiations happening in the board room, the attorneys at HBSS will aggressively represent your interests every step of the way.

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