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A.B. 2159 Bars Evidence and Discovery of Immigration Status in Personal Injury and Unlawful Death Actions

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On August 17, 2016, Governor Jerry Brown signed into law a bill authored by Assemblymember Lorena Gonzalez (D-San Diego) that would prevent evidence of immigration status in any civil personal injury and unlawful death action.

A.B. 2159 will be effective January 1, 2017 and will have a long-awaited impact on a number of current and future civil cases that have previously limited financial recovery for individuals in the United States without valid legal status.

Prior to passage of A.B. 2159, the question regarding a plaintiff's citizenship or lawful place of residence was one of law to be decided exclusively by the trial court outside of the presence of the jury. This prior rule worked to limit the amount of recovery for injuries sustained by an individual unlawfully present in the United States. For example, under prior case authority an undocumented plaintiff's loss of earnings would be based on what the person would earn in their home country rather than the loss sustained in the United States. In some cases, the plaintiff's future medical damages were also reduced to the amount the plaintiff would have had to pay for medical treatment in their home country, which ignored the fact that the injured person was actually present in the United States obtaining medical treatment that was more expensive than in their home country.

The prior rule, which allowed a plaintiff's immigration status into evidence, led to inequitable results. Sometimes plaintiffs that had a valid claim for a wrongful personal injury or unlawful death action would agree to settle for much less than they were entitled to or prefer to not pursue loss of future earnings damages for fear of deportation. Culpable defendants could leverage a person's immigrant status to obtain unjust results.

A.B. 2159 corrects an outdated legal decree that limited recovery to a significant group of immigrants. Sponsors of the bill have noted that our courts should treat all people equally when they are wrongfully injured or killed and not operate under a two-tiered system that significantly undervalues compensation based solely on immigrant status.

Under this bill, neither the plaintiff nor the defendant in personal injury and wrongful death cases would be able to argue for more or less compensation than would be expected in the United States, because immigration status would be irrelevant and inadmissible, and not subject to discovery by either party.

In California employees have, since 2002, been able to bring action against employers for violation of labor and employment law. In these cases, evidence of immigrant status was generally not considered a factor in an award of back wages. A.B. 2159 is another measure enacted to protect individuals seeking recovery of fair compensation.

The new law guarantees equal treatment for plaintiffs in California personal injury lawsuits regardless of a person's immigration status. In these cases, an individual's legal status is now considered irrelevant in an assessment of damages or recovery. Hopefully, this legislation will provide equal treatment under the law to all individuals.

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