

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SAFEHARBOR EMPLOYER
SERVICES I, Inc.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D02-3380

JUAN CINTO VELAZQUEZ,

Appellee.

Opinion filed October 13, 2003.

An appeal from a Final Order of the Judge of Compensation Claims (JCC),
Juan A. Bello, Judge

David A. Lamont, The Lamont Law Group, P.A., Clearwater and H. George Kagan,
Miller, Kagan, Rodriguez & Silver, P.A., West Palm Beach, for Appellant.

Russell A. Dohan, Goldberg, Dohan & Katz, L.L.P. and Randy D. Ellison, West
Palm Beach, for Appellee.

HAWKES, J.

We are asked to decide whether an illegal alien may receive benefits under
Chapter 440, Florida Statutes (2002), in light of *Hoffman Plastic Compounds, Inc. v.*
NLRB, 535 U.S. 137, 122 S.Ct. 1275, 152 L.Ed.2d 271 (2002). We find that he can,
and affirm.

Safeharbor Employer Services, Inc. argues that *Hoffman* preempts Florida law, and thus illegal aliens in Florida are precluded from receiving workers' compensation benefits. *Hoffman* held that pursuant to the Immigration Reform and Control Act (IRCA), the National Labor Relations Board lacked authority to award backpay to an illegal alien because he had never been legally authorized to work in the United States, even though he had been unlawfully terminated in violation of the National Labor Relations Act and would have otherwise been entitled to benefits. *See id.* at 1282.

Although not yet addressed by Florida courts, this issue has been decided by the Supreme Courts of Pennsylvania and Minnesota. The Pennsylvania Supreme Court held that subsequent to *Hoffman*, public policy did not exclude an illegal alien from receiving relief under their Workers' Compensation Act. *See Reinforced Earth Co. v. W.C.A.B. (Astudillo)*, 810 A.2d 99 (Pa. 2002). Similarly, the Minnesota Supreme Court recently held IRCA, subsequent to *Hoffman*, does not preempt a state's authority to award workers' compensation benefits to illegal aliens. *See Correa v. Waymouth Farms, Inc.*, 664 N.W. 2d 324 (Minn. 2003).

The Florida Workers' Compensation Act clearly allowed benefits to illegal aliens under Chapter 440 prior to *Hoffman*. *See Cenvill Development Corp. v. Candelo*, 478 So. 2d 1168, 1170 (Fla. 1st DCA 1985); *see also Gene's Harvesting v. Rodriguez*, 421 So. 2d 701, 701 (Fla. 1st DCA 1982) (holding fact that workers' compensation claimant

was illegal alien did not preclude entitlement to benefits for work-related injury). *Hoffman* does not mandate a different result.

In the absence of an express congressional statement, a state law may still be preempted if that law actually conflicts with federal law, or if federal law so thoroughly occupies a legislative field as to require a reasonable inference that Congress left no room for it to be supplemented by the state. *See Harrell v. Fla. Constr. Specialists/AARLA/Agent for FWCIGA*, 834 So. 2d 352 (Fla. 1st DCA 2003). IRCA does not contain express preemption language nor does it so thoroughly occupy the field as to require a reasonable inference that Congress left no room for states to act. Further, since *Hoffman* found benefits other than backpay to be applicable to illegal aliens, there is no conflict between state and federal law in this case. *See Hoffman*, 122 S. Ct. at 1285. The United States Supreme Court has stated that workers' compensation is an area where states have authority to regulate under their police powers. *See DeCanas v. Bica*, 424 U.S. 351, 336, 96 S. Ct. 933, 937, 47 L. Ed. 2d 43 (1976). Therefore, we conclude that the Florida legislature's right to enact workers' compensation benefits for illegal aliens is not preempted by federal action. The JCC's award of benefits is

AFFIRMED.

WOLF, C.J., and BROWNING, J., CONCUR.

