Case No. S196568

IN THE SUPREME COURT OF CALIFORNIA

VICENTE SALAS,
Plaitniff and Appellant,
v.
SIERRA CHEMICAL CO.,
Defendant and Appellee.

SECOND MOTION FOR JUDICIAL NOTICE

Appeal from the Court of Appeal
Third Appellate District, Case No. C064627
Superior Court of California, County of San Joaquin
Superior Court Case No. CV033425

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Pursuant to Rule 8.252(a) of the California Rules of Court, Plaintiff and Appellant Vicente Salas respectfully requests that the Court take judicial notice of the matters appended hereto as Attachments D, E, and F, which relate to the issues raised on this appeal.

Attachment D is a true and correct copy of the bill analysis of SB 1818 of the Assembly Committee on Labor and Employment.[1] It is relevant to this appeal in that questions of the Legislature's intent in enacting SB 1818 are material to its construction and interpretation in this matter. Judicial notice of Attachment D was not sought from the lower courts in this case, and it does not relate to proceedings in this matter occurring after the order of judgment herein.

Attachments E and F are true and correct copies of portions of official publications of the U.S. Social Security Administration ("SSA"). Attachment E is an excerpt from "The Story of the Social Security Number," Social Security Bulletin, Vol. 69, No. 2, 2009. Attachment F is an excerpt from SSA's Annual Performance Plan for Fiscal Year 2013, issued in February 2012. Information contained in these publications is probative of whether the SSA may inadvertently issue the same Social Security number to more than one person. Judicial notice of these SSA publications was not sought from the lower courts in this case, and they do not relate to proceedings in this matter occurring after the order of judgment herein.

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[1] This Court has looked to committee analyses as an aid to discerning the Legislature's intent in enacting legislation. (*See, e.g., In re J.W.* (2002) 29 Cal.4th 200, 211-12.)

Dated: March 1, 2012

Respectfully submitted,

David C. Rancaño
RANCAÑO & RANCAÑO

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By: _____
CHRISTOPHER HO

Attorneys for Petitioner
VICENTE SALAS

ATTACHMENT D

BILL ANALYSIS

Date of Hearing: June 26, 2002

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Paul Koretz, Chair
SB 1818 (Romero) - As Proposed to be Amended: June 26, 2002

SENATE VOTE : 23-14

SUBJECT : Backpay awards.

SUMMARY : Amends the Civil, Government, Health and Safety and Labor Codes to include legislative findings and declarations regarding the protections, rights and remedies of employees, regardless of immigration status, under state law. Specifically, this bill :

1) States legislative findings that:

a) All protections, rights and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

b) For purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability

c) In proceedings or discovery undertaken to enforce state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make such inquiry has shown by clear and convincing evidence that such inquiry is necessary in order to comply with federal immigration law.

d) The provisions of this bill are declaratory of existing law.

e) The provisions of this bill are severable, and that if any provision of this bill, or its application is held invalid, that invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

Provides a framework for the enforcement of minimum labor standards relating to employment, civil rights, and special labor relations. Various state agencies have the authority to remedy specific violations where an employee has suffered denial of wages due, proven discrimination, unlawful termination, suspension, or transfer, for the exercise of their rights under the law. Among the many remedies, the state may issue reinstatement and back pay awards for monies due the employee in order to make them whole.

In March 2002, the United States Supreme Court ruled, in a 5 - 4 decision, that the federal Immigration Reform and Control Act of 1986 (IRCA) precluded back pay awards to undocumented workers, even though they might be victims of unfair labor practices, because the workers were never legally authorized to work in the United States (Hoffman Plastic Compounds, Inc. v. NLRB [00-1595])

FISCAL EFFECT : Unknown

COMMENTS :
The author and proponents argue that the Hoffman decision has the potential effect of undercutting state remedies for illegal labor practices, and that this measure is needed to keep our state's labor and civil rights' remedies intact, and enhance compliance.

The Los Angeles Times reported on April 22nd that some firms are trying to use the Hoffman decision as basis for avoiding claims over workplace violations, seeking to use the ruling to avoid minimum wage and workers' compensation awards, even asking for the documents of a
worker who complained of sexual harassment.

Although spokespersons for the U.S. Department of Labor argue that the agency will continue vigorous enforcement of labor laws, regardless of immigration status, the U.S. State Department issued information that government officials were studying the impact of Hoffman:

"The U.S. Department of Labor (DOL), the Equal Employment

Opportunity Commission (EEOC) and other government offices believe the Supreme Court ruling will affect a variety of programs and policies, not only concerning pay and job

reinstatement but also remedies for victims of sexual, age, racial or other forms of discrimination.

Arguments in Support:

Proponents, the California Labor Federation, AFL-CIO, contend that the Supreme Court's recent decision in Hoffman , promotes and rewards the unscrupulous practice of hiring and then retaliating against undocumented workers. The Labor Federation asserts that "even the Bush Administration filed arguments with the Supreme Court in support of undocumented workers, recognizing that penalties are needed to keep employers from exploiting all workers."

National Council of La Raza argues that by allowing employers to use undocumented workers as strikebreakers, the Supreme Court has undermined the rights of all union members. Employers who fear unionized workers who are fighting for better wages and working conditions now have an added incentive to hire undocumented workers, knowing that they will not have to compensate the workers they fire for otherwise unlawful union activities.

Arguments in Opposition:

The California Manufacturers and Technology Association (CMTA) is opposed to the bill as it "could set a precedent that could be used to set aside future unfavorable court rulings on federal preemption of state law." Additionally, the CMTA notes that the ruling in Hoffman "restored the proper balance between labor law and immigration laws."

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees, (AFSCME)
Asian Law Caucus
California Immigrant Welfare Collaborative
California Labor Federation, AFL-CIO
California State Council of Laborers
Chinese for Affirmative Action
Coalition for Humane Immigrant Rights of Los Angeles
Congress of California Seniors
Golden Gate University
La Raza, Centro Legal, Inc.

Los Angeles Alliance for a New Economy, (LAANE)
MAAC Project
Mexican American Legal Defense and Educational Fund
National Council of La Raza
Pacific Association of Building Service Contractors, (PABSCO)
Service Employees International Union, (SEIU)
Services, Immigrant Rights and Education Network, (SIREN)
Sweatshop Watch
The Legal Aid Society- Employment Law Center
The Student Empowerment Project

Opposition

California Manufacturers and Technology Association

Analysis Prepared by : Liberty Sanchez / L. & E. / (916) 319-2091

ATTACHMENT E

SSA began converting its legacy SS-5 records to the Numident electronic database, completing the conversion in 1979. There is one Numident record for each SSN ever assigned.

SSA makes changes in Numident SS-5 data only upon receipt of updated information from the SSN holder. Changes in the Numident result in the addition of a new entry or iteration to the Numident record for the individual; information is never overlaid on a previous SSN Numident entry.[12] Most changes are initiated when an SSN holder completes an SS-5 requesting a replacement card or a change in the name, sex, or date of birth information on the Numident. Additionally, SSA employees may take action to change identifying information on the Numident for a person while taking a claim or processing postentitlement events. Each Numident record can contain up to 300 Numident entries (iterations) representing an addition or change to the Numident information for a person. About half of Numident records have multiple entries.

Until recently SSA also maintained a separate SSN master file indexed by cardholder name. The Alpha Index File or Alphident enabled SSA employees to search by name if the number was unknown. In the process of modernizing SSA's master files, this file was converted to an IBM DB2 relational database linked to the Numident file. This database provides the same basic functionality as the Alphident. Like the Flexoline, the DB2 uses the Russell Soundex Coding System to group all surnames that have the same basic consonant sounds. When an individual's identifying information is available, an SSA employee can attempt to locate the SSN using a key based on the Soundex version of the last name, plus the first 4 characters of the first name, plus the century, year, and month of birth. SSA has designated this database a sensitive file and access is restricted.

Handling SSN Assignment Problems

From the beginning, the process of assigning SSNs included quality checks. SSA employees had to account for every number and explain any missing serial numbers fully. Also, the SS-5s and the OA-702s were coded separately by different clerks and were later compared as a quality check (Fay and Wasserman 1938, 24).

Still, as one might expect, an undertaking as enormous as enumerating 35 million workers in one concentrated effort was bound to encounter some problems. Many individuals received multiple SSNs. Some people were under the impression that the more SSNs they received, the better. Others thought they needed a new SSN for each new job. Workers sometimes lost their original number and applied for a new one. Also, a great many unemployed and WPA employees applied for SSNs both during the initial registration and again through WPA or private employment registration. Sample studies in 1937 or early 1938 indicated that duplicate account numbers had been issued to not more than 3 or 4 percent of the applicants (Corson 1938, 4).

In 1938, a wallet manufacturer in Lockport, New York, the E.H. Ferree Company, decided to promote its product by showing how a Social Security card would fit into the wallet. The company vice president thought it would be clever to use a sample card with his secretary's actual SSN. The wallet was sold at Woolworth's[13] and many other large department stores, and the SSN was widely distributed. Many purchasers adopted the SSN as their own—5,755 people were using it in the peak year 1943, and 12 were still using it as late as 1977. In all, SSA received 40,000 incorrect earnings reports under this SSN, which had to be reassigned laboriously to proper SSNs. SSA voided the much-used number and issued a new SSN to the secretary (SSA n.d. c).

About a dozen similar cases of individuals adopting a made-up SSN shown on a facsimile card have occurred. In one case, the Social Security Board itself issued a pamphlet with the made-up number 219-09-9999 that was adopted by an individual (SSA n.d. c).

Also, prior to 1961 SSA field offices issued new SSNs. Only a fraction of these SSN assignments were screened at the central office for a previously assigned SSN, and then only manually (Long 1993, 84). Thus, issuing duplicate SSNs was possible. Beginning in 1961, the central office in Baltimore issued all new SSNs, but it was not until 1970 that an electronic method of checking for previously issued SSNs (called "EVAN" for "electronic verification of alleged numbers") was devised (SSA 1990, 4). Today, automated systems with sophisticated matching routines screen for previously issued SSNs.

SSA has since introduced more rigorous verification procedures. On April 15, 1974, SSA implemented evidence requirements (age, identity, and citizenship/alien status) for applicants for an original SSN who are foreign-born, or are U.S.-born and age 18 or older. Then, on May 15, 1978, SSA began requiring evidence of age, identity, and citizenship/alien status from all

applicants for original SSNs, and evidence of identity for replacement Social Security cards. In addition, all foreign-born applicants for replacement cards were required to submit evidence of citizenship/alien status.

Also, in 1979 SSA created an electronic file called MULTX from a set of punch cards identifying multiple SSNs that was maintained by SSA's Office of Earnings Operations. As of December 2007, SSA had identified and cross-referenced in the MULTX file over 4.7 million individuals with multiple SSNs, about 93 percent of whom have only two SSNs. Generally, those with multiple SSNs are the "very old" on the Numident; a study conducted in 2002 showed a weighted average age of 82.9 (SSA 2002). The requirement for proof of age and identity for SSN applicants beginning in 1974 combined with the implementation of an automated SSN screening system in 1984 have significantly reduced the multiple-SSN problems.

Under a few rare circumstances, SSA may legitimately issue a new SSN to a person with a prior SSN. The conditions are highly restrictive. SSA will assign a new SSN to a victim of harassment, abuse, or life endangerment if the individual provides evidence to substantiate the allegations. In addition, SSA may assign a new SSN to an individual who is a victim of SSN misuse, which means that the number has been used with criminal or harmful intent and the individual has been subjected to economic or personal hardship. Third party evidence is necessary for SSA to substantiate an individual's allegation of SSN misuse. However, an individual should consider changing his or her SSN only as a last resort because getting a new SSN may adversely impact one's ability to interact with federal agencies, state agencies, and employers, as all of the individual's records will be under the former SSN.

Applying for an SSN Today

Just as it was in 1936, today a person must complete an application to obtain an original or replacement SSN or to change the information in SSA's Numident records. There are a number of ways to initiate the application process.

The paper form a person completes to apply for an original SSN or a replacement card or to make changes to SSA's Numident record is still the SS-5. The SS-5 application is available online[14] or in any SSA field office. The application and required evidence can be taken or mailed to any Social Security office for processing. An in-person interview is required if the applicant is age 12 or older and is applying for an original SSN. The Veterans Affairs Regional Office (VARO) in Manila also accepts SS-5 applications for an original SSN or a replacement card, as do all U.S. Foreign Service posts and all military posts outside the United States. SSA employees key the SS-5 application data and evidence into the SSA computer system, which uses the information to create or update the Numident. The signed SS-5 application is retained for a short period in the field office, and then is sent to a records center in Pennsylvania for microfilming. Once microfilmed, the original SS-5 is destroyed.[15]

In August 1987, SSA began a three-state pilot of the "Enumeration at Birth" (EAB) process in which the parent of a newborn can request an SSN as part of the state's birth registration process. Additional states began to participate in EAB in July 1988. By the end of 1991, 45 states, the District of Columbia, Puerto Rico, and New York City had signed agreements (Long 1993, 83). Today, over 90 percent of parents use the EAB process offered in all 50 states plus Puerto Rico and the District of Columbia. SSA receives nearly three-quarters of original SSN applications through the EAB process and issues over 4 million SSNs via EAB each year (SSA 2006). No microfilm SS-5 exists for a record created through the EAB process.

Beginning in 2002, SSA began another pilot program referred to as Enumeration at Entry (EaE) that allows noncitizens admitted for permanent residence to obtain SSNs and Social Security cards based on data collected as part of the immigration process. This pilot was expanded worldwide in early 2003. EaE is a joint effort involving the Department of State (DoS), DHS, and SSA. Under EaE, a person aged 18 or older can apply for both an immigrant visa and an SSN at a DoS office in his or her home country. If the visa is granted, then DoS transmits the identifying data from the person's visa/SSN application to DHS. If and when the person is physically admitted to the United States, DHS updates certain data, if necessary, and sends it to SSA for the SSN to be assigned and the card to be issued. All noncitizens enumerated through EaE receive an SSN in the special area number series 729 through 733. As of January 20, 2009, SSA had issued 429,959 original and 114,714 replacement SSNs through the EaE process. SSA is currently working with DoS and DHS on expanding the EaE process to additional noncitizens.

ATTACHMENT F

Performance Measures – Strategic Objective 3.3

3.3a: Reduce the percentage of paper Forms W-2 completed

Fiscal Year	2012	2013
Target	14.0%	13.0%
Historical Performance		
Fiscal Year	2009	2010	2011
Performance	16%	15%	14.4%

Data definition: The percentage of paper Forms W-2 processed to completion. We derive the percentage by dividing the number of paper Forms W-2 processed to completion by the total number of Forms W-2 processed to completion. Data are reported cumulatively for the current calendar year, as Forms W-2 are processed for the prior tax year.

Data source: Earnings Modernization Operational Data Store Management Information Reports

3.3b: Achieve the target percentage for correctly assigning original Social Security numbers

Fiscal Year	2012	2013
Target	99.0%	99.0%
Historical Performance		
Fiscal Year	2008	2009	2010	2011
Performance	99.9%	99.9%	99.9%	Available May 2012

Data definition: We derive the percentage using a statistically valid sample of original Social Security Numbers assigned in the fiscal year. We divide the number of correctly assigned Social Security Numbers by the total number sampled. We consider the Social Security Number assigned correctly when: 1) the individual did not receive a Social Security Number that belongs to someone else; 2) the individual did not receive more than one Social Security Number, except where permitted; and 3) the individual is eligible to receive a Social Security Number based on supporting documentation.

Data source: Enumeration Quality Review

CERTIFICATE OF SERVICE

I, PAMELA MITCHELL, declare:

I am a citizen of the United States, over 18 years of age, employed in the County of San Francisco, and not a party to or interested in the within entitled action. I am an employee of THE LEGAL AID SOCIETY - EMPLOYMENT LAW CENTER, and my business address is 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

On March 1, 2012, I served the within:

SECOND MOTION FOR JUDICIAL NOTICE

__X__ by U.S. mail to the persons and at the address set forth below:

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Stockton, CA 95202

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct. Executed on March 1, 2012..

PAMELA MITCHELL