

How Will the End of the Deferred Action For Childhood Arrival (DACA) Affect Employers?

Labor & Employment Law Update

By Sara Zorich on September 14, 2017

On September 5, 2017, the Acting Secretary of Homeland Security rescinded the memorandum issued during the Obama administration that had established the Deferred Action for Childhood Arrival (DACA) program, announcing that it will be phased out over the next six months, allowing Congress time to craft a “permanent legislative solution.”

Ending DACA will affect not just the people covered under the program, but also thousands of employers nationwide. A controversial Obama-era policy, DACA has been a program where certain people who came to the United States as minors without documentation, yet met several guidelines, could request consideration of deferred removal proceedings and request authorization to live and work in the United States legally. Currently, the program shields around 800,000 young undocumented immigrants from deportation and allows them to work legally.

U.S. Citizenship and Immigration Services (USCIS) issued new guidance on their website as of September 5, 2017 regarding initial DACA requests and DACA renewals. Here are the key points to note:

- DACA beneficiaries will not be affected until after March 5, 2018—six months from the date of the announcement
- No new DACA applications will be considered, but applications filed by September 5, 2017 will still be processed
- Current DACA recipients whose permits and or work authorization expires between now and March 5, 2018, have until October 5, 2017 to apply for renewal of these benefits

In light of this change, employers are recommended to review their Form I-9's and identify any individual whose work authorization is going to expire on or before **March 5, 2018**. Employers should notify these employees of the date their work authorization will expire and remind them that the company cannot continue to employ the employee past this expiration date unless the employee is able to provide proof of continued work authorization. To reiterate, any DACA renewals must be filed **no later than October 5, 2017** or USCIS will not process

them. Read the USCIS announcement for details.

However, some Employment Authorization Document (EAD) categories (other than DACA) have been granted a 180 day automatic extension to the employee's work authorization deadline. Visit the USCIS website for more information on the eligibility requirements for the Automatic Employment Authorization Document (EAD) Extension. Thus, employers must be careful to follow the applicable guidelines when addressing the proper end date of an employee's work authorization and reauthorization requirements.

Final Takeaway: Employers must understand that they **MAY NOT** discriminate and cannot refuse to hire an individual solely because that individual's employment authorization document will expire in the future.

We anticipate that Congress may now attempt to fast track some type of immigration reform related to those persons that were formerly covered under DACA, but only time will tell.

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