

DACA ALERT

WHAT WORKING PEOPLE NEED TO KNOW ABOUT DEFERRED ACTION FOR CHILDHOOD ARRIVALS

The Trump administration continues to try to dismantle the Deferred Action for Childhood Arrivals (DACA) program, despite a ruling from the Supreme Court striking down its previous attempt to do so and indicating that the program should resume. Here's the latest information you need to know:

What did the Supreme Court decide in the DACA case?

In June 2020, the Supreme Court ruled that the administration's efforts to end the DACA program were unlawful. Since the memo terminating the program was deemed invalid, the DACA program should have resumed under the rules in place prior to the Trump administration's 2017 announcement that it was ending the program.

What did the administration do after the Supreme Court ruling?

Rather than resume processing DACA applications and renewals, the Department of Homeland Security (DHS) announced on July 28 that it would continue to reject all new DACA applications. Moreover, for all future DACA renewals, it will cut the duration of the DACA status in half, so renewed protections and work permits now will last only one year instead of two. At the same time, DHS announced that it is continuing to consider the possibility of ending DACA completely, as it sought to do in 2017.

What should workers do now?

Workers with DACA can and should apply to renew their status, and employers should not take any adverse action against these workers. DACA recipients should be prepared to file for renewal at least 150 days before the expiration date on their Employment Authorization Document (EAD). Keeping in mind that the pandemic has slowed processing times and that the window for renewals is uncertain, it may be helpful for workers to consult with immigration counsel on the timing for their renewal applications.

Are there any changes to the renewal process?

Although the DACA renewal steps remain the same, we anticipate the administration will screen renewals even more carefully, so applicants should prepare thoroughly. They will need to file the relevant application forms with U.S. Citizenship and Immigration Services and pay the same fee to renew their work authorization, even though the renewal period now will be for only one year rather than two. To make matters worse, any day the administration could finalize its proposal to increase DACA filing fees from the current \$495 to an even more burdensome \$765.

Can employers fire workers or otherwise discriminate against them because of their DACA status?

Generally, no. In the vast majority of cases, employers should have no reason to ask workers about their DACA status, and workers with DACA need not explain why they have to renew an EAD. Federal immigration law prohibits employers from discriminating against DACA holders based on their national origin, and from asking employees for more or different documents than are required to complete the I-9 process.

How will the latest DACA policy affect people at work?

Employers should not and need not reverify work authorization documents of individuals simply based on the administration's DACA announcement. Employers are, however, required to reverify work authorization documents upon their expiration. At such time, workers simply should present copies of their renewed EAD. Should an employer refuse to allow a DACA recipient to work despite having timely renewed, the worker should contact the union.

What happens if workers do not renew?

They will lose their protected status and no longer will be able to work lawfully.

Can DACA recipients travel abroad?

DHS no longer will grant DACA recipients permission to travel abroad unless it is for exceptional circumstances. A worker who already has been granted advance parole should consult a lawyer before leaving the country.

Will DHS process first-time applications for DACA?

No. Unfortunately, the administration is refusing to accept new DACA applications. If a worker already has filed a first-time application, her fee should be returned.

What, if anything, do the DACA changes mean for temporary protected status (TPS) holders?

Like DACA recipients, hundreds of thousands of workers with TPS have been awaiting court rulings on the legality of the administration's termination of their country designations. Despite the similarities in the cases, the issues will be decided independently, so we cannot make any firm predictions for TPS workers based on the DACA case.

What role should unions play?

Working people with DACA need to know the union has their back during this extremely difficult time. Unions should be informed about the issue, provide information and support to their members, and engage in the fight for legislative solutions. As a general matter, individuals in DACA status also should investigate whether they may be eligible for any other type of immigration relief; the union can refer them to appropriate immigration counsel.

What solutions should we be fighting for?

More than 1 million hardworking men and women stand to lose their work authorization unless Congress takes steps to defend DACA and TPS recipients. Our entire workforce benefits from these programs that allow people to live and work without fear in our country, and we all will be harmed if these workers lose their status. That is why we continue to push for automatic status extensions in the next COVID relief package, and for the creation of a path to citizenship by passing the American Dream and Promise Act.

Where can we go for more information?

For campaign materials and more information about ways to get involved in the fight for a permanent fix for DACA and TPS holders, go to go.aflcio.org/immigrationresources. If you have questions or need additional support, please contact Shannon Lederer at slederer@aflcio.org.