

Supporting DACA Team Members: A Guide for Employers

Concrete ways employers can support their DACA-impacted employees, interns, and contractors in a time of uncertainty

IN REGARD TO THE IMPENDING COURT CASE DECISION ON DACA

<https://www.fwd.us/news/daca-employer-guide/>

BACKGROUND

On July 16, 2021, Texas federal court Judge Hanen published his opinion on the DACA case, Texas v. United States, which challenged the legality of the DACA policy. Judge Hanen's opinion was that DACA is not a lawful policy, but pending future litigation, allowed those with existing DACA to continue to renew. After this decision, no first-time initial DACA requests were granted nor denied, rather held without a determination. However, the court order did not invalidate any existing DACA work permits or travel authorization, including advance parole.

After this opinion was published, it went to the Appeals for further litigation. At this point, there is a very substantial chance that either Judge Hanen or the 5th circuit will bring an end to renewals for existing DACA recipients. This means individuals will no longer be able to access the DACA policy for new renewals, essentially marking the end of the DACA policy.

The next six to nine months will be critical for employers to support their DACA employees before the program potentially comes to an end.

Fortunately, there are a number of things employers can do for their employees over the next several months. Employers with DACA recipients on staff can rest assured that USCIS will continue accepting and processing DACA renewal requests and advance parole requests until there is a court order saying otherwise.

Meanwhile, USCIS has assigned more adjudications officers to process DACA filings recently to address severe backlogs. However, your employee may need support requesting expedited processing of DACA renewal and work authorization filings to ensure their timely renewal, among other things.

RECOMMENDATIONS

During this critical window of opportunity, employers can support their DACA recipient employees and engage in a variety of ways. The following suggested actions include ways to support DACA recipient employees within your company or organization, and support the DACA policy and potential beneficiaries more fully.

1. Track and fund renewals for DACA recipient employees who are eligible, and encourage them to renew as soon as possible. Help those not yet eligible to at least prepare to file their renewals.

- Encourage and help pay for employees to speak with an immigration attorney or accredited representative.

- DHS recommends applicants file no earlier than 150 to 120 days prior to the date of their current DACA and EAD's expiration. However, due to current processing backlogs, employees may want to consider filing earlier than 150 days prior to their current date of expiry. Renewals filed earlier than 150 days prior to current expiration will not be rejected as a result of early filing.
- Pressure the Biden administration to rescind the policy that does not allow DACA renewals to be adjudicated more than 150 days prior to current expiration.
 - Resources, including a Legal Service Directory, are available to help with the DACA renewal process at www.InformedImmigrant.com.

2. Support those DACA employees who would be eligible for a legalization pathway with advance parole (which allows them to lawfully return to the U.S. after travel abroad) by both facilitating their travel abroad and return with advance parole and funding their filing for advance parole.

- Advance parole can be requested to temporarily leave and reenter the U.S. for a business, humanitarian, or educational purpose and costs approximately \$575, which does not include legal fees or the cost to travel. Employers that are able should cover these expenses.
- Employment-based opportunities for utilizing advance parole could include overseas assignments, interviews, conferences, training, or meetings with clients. Applicants should show how the specific travel abroad fulfills their job requirements. Forms of evidence that can demonstrate the validity of the request can include, but are not limited to:
 - Letter from employer detailing how this travel is required for the applicant
 - Conference program showing applicant's name as speaker or confirmation of conference registration as an attendee
 - Invitation to speak at conference/training
 - Emails or other communication showing need for applicant to be present at an interview or meeting abroad
- Employers can fund legal representation for DACA recipients with a need to travel for humanitarian purposes (such as for obtaining necessary medical treatment for oneself, visiting an ailing (very sick) relative or assisting a relative who has an upcoming medical treatment; attending a family member's funeral; or visiting a recently deceased family member's grave). These humanitarian requests for advance parole can also be done on an expedited basis for urgent reasons such as when a family member is ill or has died.
- Read other considerations regarding advance parole on [Informed Immigrant's advance parole page](#).

3. Pressure the Biden Administration and Congress to support legislation with a pathway to legal status for undocumented immigrants.

- Companies with contacts at [Senate](#) and [House](#) offices and the Administration should urge them to support DACA legalization legislation now.

4. Explore any existing avenues to you as an employer to sponsor your DACA employees for lawful immigration status, whether on a temporary (ie, as nonimmigrants such as via the H-1B program) or long term basis (employment-based petition for lawful permanent residence).

EMPLOYEE SUPPORT

For more detailed ways to support your DACA employees in the everyday work environment, please review the suggestions and resources below.

- 1. Provide financial assistance** for DACA renewal request processes and prep work. A DACA renewal filing is \$495, not including preparation costs (legal consultation, postage and other materials).
 - These costs can be prohibitive to the employee, and it is within an employer's rights and interest to provide this support.
- 2. Serve as a liaison to your Member of Congress** to facilitate expedited review of your employee's employment authorization document (EAD) request if their expiration date is nearing.
 - Given current [processing backlogs](#) we encourage recipients to renew as close to their 150 day mark from their EAD expiration date, if not sooner.
 - As an employer, you can contact your U.S. [Senator](#) or [Representative](#), with your employee's written consent, and request that they ask USCIS to expedite the EAD request. While USCIS does not currently process formal [expedite requests](#) from DACA requestors, it is our understanding that USCIS may still consider circumstances — such as those described on [USCIS' expedite request webpage](#) — that warrant more expeditious processing. We therefore encourage you to include any information that may be helpful to USCIS in processing your employee's EAD filing in your correspondence with your member of Congress' office. If your employee has not yet filed their renewal DACA request and EAD request, you can provide a letter of support explaining the exigent circumstances for your company, again in line with USCIS' [expedite criteria](#), if any, that should be included as part of the cover letter of their filing. (Please note that employees have no legal obligation to inform you of the expiration date on their DACA or EAD).
- 3. Offer to fund immigration legal assistance/counsel** for immigration-impacted employees, contractors, and family members of employees, including spouses, parents, siblings, etc. (using outside counsel to avoid potential conflicts).
 - Encourage high quality individual in-depth immigration attorney consultations for employees to examine the following:
 - Whether the employees have a non-DACA path to lawful immigration status either with or without Advance Parole (AP). If they are eligible for legal avenues after utilizing AP, discuss ways to create educational or business opportunities that would render DACA employees eligible for lawful immigration status. For example, as an employer, you may be eligible to sponsor your DACA employee for nonimmigrant status, such as an H-1B, or for an employment-based green card, in certain circumstances. Additionally, while you cannot sponsor your employee for asylum, you can help secure competent legal counsel that can identify whether your employee may have a viable asylum claim that could ultimately lead to a green card.
 - Assistance can also include legal defense of employees who are detained, or encounter other legal troubles arising from losing deferred action, which is their protection from deportation.
- 4. Arrange employee-centered, supportive offboarding programs** for employees unable to renew their work authorization or for those whose DACA and work authorization lapse while their renewal filings are pending in USCIS backlogs, and who are forced to leave the workplace. Review existing company

policies to determine if affected employees can receive separation benefits, including accrued sick leave, vacation leave balances, and continuation of health benefits. Consider what health care benefits can be extended despite termination.

5. For employees whose work authorizations are close to expiration and unlikely to be able to be renewed before the DACA policy potentially ends, review company policies to determine availability of separation benefits and continuation of health benefits.
6. Assuming the employer has an employee assistance program (EAP), remind immigration-impacted employees of **available mental health resources**.
 - If your company does not already have existing EAPs in place, make a list of in-network mental health service providers for easy access — and if superior options are only offered out of network, cover the difference.
7. **Host a regular call** with senior management, HR, and directly affected individuals to ensure that the company is being attentive to employees' needs.
8. **Host Know Your Rights trainings** during work hours for all staff that cover an individual's rights when interacting with law or immigration enforcement at home, in public spaces, and in the workplace. Consider using outside counsel to host this training.
 - Establish, communicate, and implement company protocol to protect employee rights should immigration enforcement visit the work site or request employee information from managers. Employers can take these steps while simultaneously ensuring they observe their own legal obligations.
 - Plans should include employees' emergency contact list, attorney's contact information, family contact, and alien numbers as necessary.
9. **Make all trainings and resources** on immigration and rights widely known and available to all staff, and clearly designate an HR Point of Contact for anyone looking for additional resources or assistance (including legal assistance) to access confidentially.
10. Be sensitive to people's differing levels of comfort with being public about their immigration status. Never "out" somebody to coworkers or speak about somebody's immigration status with others if that individual has not made explicitly clear that they consent to this information being shared.

SOLIDARITY AND SERVICE

1. Ask law firms you use whether they will agree now to **participate in pro bono programs** being set up that will provide advice to DACA recipients and to businesses that employ DACA recipients.
2. **Commit company or contracted lawyers' hours** to provide in-house, pro-bono legal assistance at local immigrant-serving organizations. You can find a list of organizations [here](#).
3. **Engage in proactive press efforts to highlight your company or organization's support for DACA recipients**.
 - Call on Congress to pass a permanent legislative solution for Dreamers. This can include calling for the Senate to pass the House-passed Dream and Promise Act, which would extend protections to DACA recipients and TPS holders or include the most recent Build Back Better legislation.

- Submit an opinion editorial (“op-ed”) from leadership to a local news outlet. Some potential targets can be business publications that cover your industry, or the major daily newspaper in your location.
 - [Refer to this guide for suggestions on how to write an op-ed](#), and feel free to reach out to Press@fwd.us for additional assistance.
4. **Highlight your company or organization’s support for DACA recipients across your platforms, such as your website and your social media accounts:**
- During last year’s Supreme Court Case, the Court cited a robust business brief full of accounts of how the DACA population fuels businesses and local economies. Public employer support goes a long way. Create opportunities for leadership to speak out on employer support for DACA recipients.
 - Show your support on social media; Facebook, Instagram and Twitter.
5. **Join the ‘I Stand With Immigrants’ initiative** to promote solidarity throughout the calendar year and publicly showcase your support for immigrants/immigration reform.
- Publish a blog post on immigrant contributions within the company/organization
 - E.g.: Celebrate Immigrant Heritage Month in June
6. **Support local organizations and nonprofits** hosting DACA renewal workshops, scholarships for DACA-eligible individuals, or other resources that benefit DACA recipients.
- [Find a list of recommended organizations assisting DACA recipients here.](#)
7. **Support Informed Immigrant’s** work with local organizations providing immigration legal services.
- Sponsor a legal services clinic for immigration and consular services
 - Donate to a Know Your Rights card fund for local immigrant-serving organizations. [KYR cards](#) have prevented civil rights violations of undocumented individuals in the past.
 - Sponsor a local Know Your Rights training for a school, faith group, youth group or other community organization