

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

November 7, 2023

STATE OF PLAY ON DACA

Overview

Within the next two years, the future of the Deferred Action for Childhood Arrivals (DACA) program will once again likely be in the hands of the Supreme Court. There is a significant chance the Court could rule to end DACA once and for all. DACA could also be at risk of ending should there be a new presidential administration in 2025.

This current court case is the most serious threat to DACA recipients to-date and has upped the urgency for businesses to do whatever they can to support their DACA employees and to capitalize on the finite duration of the program by acting now.

Below, we have outlined the steps that employers can take now to prepare and support impacted members of their teams.

SUPPORTING DACA EMPLOYEES: RECOMMENDATIONS FOR BUSINESSES

To reiterate, the 5th Circuit kept in place the District Court's partial stay — which means that for existing DACA recipients, DACA renewals can continue and their DACA and work authorization remain valid. This means that if employees have a work permit today, it remains; and programs like advanced parole remain.

It's important to remember that the most recent decision in Texas v. United States by Judge Hanen did not take away renewals or advance parole for current DACA recipients — only the appeals court, or later, the Supreme Court, can change that.

Employers can support their DACA recipient employees and engage in a variety of ways. The following suggested actions are being put forward with the understanding that the future of DACA is limited and that we should leverage DACA to protect as many of its beneficiaries as possible for the long term.

- 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 employees to speak with an immigration attorney or accredited representative to determine if they may be eligible for potential avenues to legalization
 - Resources, including a Legal Service Directory, are available to help with the DACA renewal process at www.InformedImmigrant.com.

2. Support advance parole opportunities for DACA employees.

- By traveling with advance parole, DACA recipients may unlock existing pathways to more permanent protections.
- Businesses can assist employees seeking to utilize advance parole for education, employment, or humanitarian reasons.

3. Contact the Biden Administration and Congress as soon as you can and call on them to pass legislation with a pathway to legal status for immigrants.

- In the face of Congressional inaction, there are steps the Biden Administration can take to protect DACA recipients. Review our Dreamer Protection Plan for details on these opportunities.
- Companies with contacts at Senate and House offices and the Administration should urge them to support legislation providing permanent protections for Dreamers.

4. Sponsor DACA employees for permanent labor certification or a nonimmigrant visa such as an H-1B.

- In certain, limited circumstances, some DACA recipients may be eligible to adjust their status through employer sponsorship.
- Undergoing a legal screening with an immigration attorney can help DACA recipients learn if they may be eligible for employer sponsorship.

MORE DETAILS ON ADVANCE PAROLE

Advance parole is an administrative procedure that allows certain noncitizens inside the U.S. seeking to travel abroad to receive advanced authorization to reenter the U.S. after temporarily traveling abroad. To travel abroad using advance parole, DACA recipients must have:

- A valid employment authorization document (EAD);
- A valid passport from their country of citizenship; and
- A qualifying education, employment, or humanitarian reason for travel.

After an individual applies and is approved for advance parole, U.S. Citizenship and Immigration Services (USCIS) issues an advance parole travel document to travelers before they depart the U.S.

Critically, advance parole can eliminate certain legal barriers for undocumented individuals hoping to adjust their immigration status. Many DACA recipients are unable to adjust their status from within the U.S. due to the manner in which they initially entered the country. Current legal barriers require many DACA recipients to leave the country and wait years---as much as a decade---to seek reentry through a consulate outside the U.S. (known as "consular processing"). Using advance parole to leave the country and reenter with formal inspection—a legal requirement to adjust status—could open up existing or future pathways for these individuals to adjust status or pursue new immigration protections while they stay in the country.

ADDITIONAL 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.** 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.

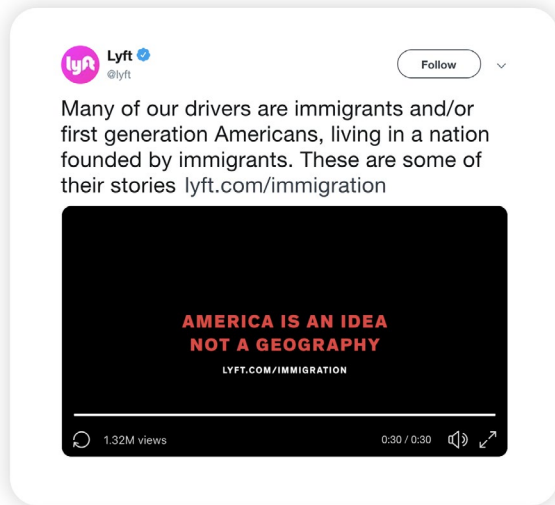
2. **Serve as a liaison to your Member of Congress** to facilitate expedited review of your employee's employment authorization document (EAD) request if their expiration date is nearing.
 - Given current processing backlogs we encourage recipients to renew as close to their 150-day mark from their EAD expiration date.
 - 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 EAD).
3. **Offer 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). An initial screening with an attorney could help determine if an employee already qualifies for a legalization pathway even if they don't know about it yet, such as 245(i) adjustment. Assistance can include legal defense of employees who are detained or encounter other legal troubles arising from losing 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.
 - For employees whose work authorizations are close to expiration, review company policies to determine availability of separation benefits and continuation of health benefits.
5. 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.
6. **Host a regular call with senior management, HR, and directly affected individuals** to ensure that the company is being attentive to employees' needs.
7. **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.

8. **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.
9. **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. **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 JuneSupport local organizations and nonprofits hosting DACA renewal workshops, scholarships for DACA-eligible individuals, or other resources that benefit DACA recipients.
4. **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
5. **Highlight your company's support for DACA recipients across your platforms**, such as your website and your social media accounts:
 - Film and share brief videos with company leadership speaking about your company's organizational support for DACA recipients. Please contact [FWD.us](#) if you'd like support on this project.
 - Show your support on social media.
6. **Engage in proactive press efforts** to highlight your company's support for DACA recipients.
 - Publicly call on Congress to pass a permanent legislative solution for Dreamers in a letter to the editor or 'LTE'.
 - Submit an opinion editorial ("op-ed") from company 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 [FWD.us](#) for additional assistance.
7. **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.](#)

PAST SUPPORT FROM THE BUSINESS COMMUNITY



Texas Business Council:

“The TBLC welcomes the Supreme Court decision that will safeguard the hundreds of thousands of DACA recipients in the United States. These Dreamers play an important role in strengthening our economy, contributing over \$2 billion each year nationwide in state and local taxes. The TBLC looks forward to working with the Administration and Congress to encourage a bipartisan solution that will offer permanent protection to DACA recipients moving forward.



U.S. Chamber of Commerce

US Chamber:

“The Supreme Court made the right decision today for Dreamers, our economy, and our country. “Removing 700,000 Dreamers protected under DACA from our economy would deny our country talent, future leaders, and an essential piece of the American workforce including teachers, nurses, doctors, farmers, and entrepreneurs. “But make no mistake, the work is not done. It is long past time for Congress to provide permanent relief for Dreamers. As we said in 2017 when the administration announced the end of the DACA program, deporting Dreamers is ‘contrary to fundamental American principles and the best interests of our country.’” Last year, the U.S. Chamber joined a merits-stage amicus brief with more than 140 companies and business associations in support of the DACA program.

NETFLIX

Netflix:

10 Ways to Support your Immigrant Coworkers in the U.S.



Apple CEO Tim Cook:

“The 478 Dreamers at Apple are members of our collective family. With creativity and passion, they’ve made us a stronger, more innovative American company. We’re glad for today’s decision and will keep fighting until DACA’s protections are permanent.”



Diane Gherson, IBM:

“IBM’s #Dreamers have worked hard and have overcome many obstacles to pursue their education and become talented professionals valued by our company, our clients and our communities.”

BR Business Roundtable

Business Roundtable:

“We’re proud to call Dreamers across the country our colleagues, friends and neighbors, and forever inspired by their resilience and strength,” said Business Roundtable Immigration Chair Tim Cook, Apple’s CEO. “Dreamers are as American as anyone born in this country, and our laws should reflect that. Once again, we urge Congress to pass bipartisan legislation that creates a pathway to citizenship, and ends the uncertainty and fear our laws have imposed on these young people for far too long.”

COALITION for the AMERICAN DREAM

Coalition for the American Dream:

“We have seen time and again that the overwhelming majority of the American public of all political backgrounds agrees that we should protect Dreamers. DACA recipients have been critical members of our workforce, industries, and communities for years now. Their work and commitment to our companies, their families and communities are critical to our nation’s strength, especially since there are tens of thousands of DACA recipients working as front line doctors and nurses and in other critical industries fighting COVID-19.”

Uber

Uber:

Dreamer Resource Center