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

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STATE OF PLAY ON DACA

The Deferred Action for Childhood Arrivals (DACA) program faces an existential legal challenge, and there is a significant chance that the fate of the program could be before the Supreme Court within the next two years.

Since 2017, the DACA policy has been volleyed back and forth in the courts and challenged at all levels, including at the Supreme Court. On October 10, 2024, the Fifth Circuit Court of Appeals will once again consider the legality of DACA, and shortly after, will issue a decision that will almost certainly be appealed to the Supreme Court.

Both the Fifth Circuit and the Supreme Court would have the power to halt DACA renewals or to cancel active DACA work authorizations, plunging the lives of Dreamers into uncertainty and turmoil. The new presidential administration in 2025 could also move to limit or end protections for current DACA recipients.

This current court case is the most serious threat to DACA recipients to date, and has increased the urgency for businesses to support their DACA employees by acting now.

Below are steps that employers can take now to prepare and support impacted members of their teams.

SUPPORTING DACA EMPLOYEES: RECOMMENDATIONS FOR BUSINESSES

Under the latest court orders, current DACA recipients' work authorizations remain valid, and they can continue to renew their DACA protections. This means that they can continue to work. "Advance Parole" travel also remains an option for DACA recipients.

Knowing that DACA could end in the near future, employers should consider the following steps to help DACA employees maintain their DACA protections and to potentially secure more stable immigration protections:

1. **Provide access to legal consultations for DACA employees.**
    - A legal consultation with a knowledgeable and qualified lawyer can help DACA recipients discover if they are already eligible for an immigration benefit or pathway to legal status that they might not have considered or been aware of, and will determine what steps are needed to access any available pathways and protect against unintended legal consequences.
    - Qualified immigration attorneys, in partnership with DACA recipients and their employers, can determine if the employee is a good fit for any of the options below, including employer sponsorship or Advance Parole.

2. **Sponsor DACA employees for permanent or temporary work visas.**
    - In certain, limited circumstances, some DACA recipients may be eligible to access a legal status through their employer's sponsorship of a temporary work visa or a green card.
    - In June 2024, the federal government issued new guidance to streamline the temporary work visa process and access to D-3 waivers for certain immigrants, including DACA recipients and Dreamers, who have earned degrees at U.S. colleges and universities. Sponsoring an employee for a temporary work visa could unlock this pathway for them.
3. **Track and fund renewals for DACA recipient employees who are eligible, and encourage them to renew as soon as possible.**
    - United States Citizenship and Immigration Services (USCIS) encourages DACA recipients to submit their renewal requests four to five months before the expiration date.
    - A full DACA renewal filing, including biometrics and work authorization application, costs $575 if filed online, or $625 if filed by paper, not including preparation costs (legal consultation, postage, and other materials).
    - Resources, including a Legal Service Directory, are available to help with the DACA renewal process at InformedImmigrant.com.
    - 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.
    - If your employee has not yet filed their renewal DACA request, you can provide a letter of support explaining the exigent circumstances for your company, again in line with USCIS' criteria, that warrant expedited processing. These details should also be included as part of the cover letter of the employee's filing.
    - Please note that employees have no legal obligation to inform you of the expiration date on their EAD.
4. **Support advance parole opportunities for DACA employees.**

April 2025 update: Noncitizens planning to travel internationally should be aware that there is a high likelihood they could face additional screening and questioning, including secondary inspection, when attempting to re-enter the U.S., and could even be subject to detention or removal. U.S. Customs and Border Protection (CBP) officers have increased scrutiny and social media vetting at ports of entry (airports and land) and have the power to deny reentry.

- Traveling with advance parole can unlock existing pathways to more permanent protection for some DACA recipients. However, even with an approved Advance Parole document, there is no guarantee that DACA recipients or other noncitizens will be allowed back into the United States. This makes international travel extremely risky for DACA recipients. ***As a result, we cannot safely recommend that DACA recipients and others with a similar status travel internationally.*** **We strongly recommend that individuals speak to a trusted immigration attorney if they are contemplating any international travel.**
- Businesses can assist employees seeking to utilize advance parole (for education, employment, or humanitarian reasons) by providing travel opportunities and support in the application process.

MORE DETAILS ON EMPLOYEE SPONSORSHIP

You may be able to sponsor an employee with DACA for an employment-based green card or temporary work permit. A green card, or "immigrant visa," offers permanent legal status and a pathway to citizenship; a "nonimmigrant visa" offers only temporary protections, but could open options to adjust to a permanent status in the future.

Depending on the employee's occupation, skills, education, and immigration history, they could qualify to be sponsored for one of many employment-based immigration categories. One of the most common is to sponsor an employee for a permanent employment-based visa, commonly called a green card.

Another possibility is a temporary work visa, which grants work authorization and legal status for a limited period of time. Some common examples include the H-1B visa for jobs requiring a specific degree in a specific field (like a teacher with an education degree or an engineer working in a STEM field), a TN "NAFTA professional" visa (for Canadian and Mexican nationals working in certain industries), or the O-1 "extraordinary ability" visa. Recent updates to the D-3 Waiver process could help DACA recipients access these visas despite complications in their immigration history.

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. **Offer immigration legal assistance/counsel** for immigration-impacted employees, contractors, and family members of employees, including spouses, parents, siblings, etc.
    - We recommend using outside counsel to avoid potential conflicts of interest.
    - 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.
    - Other assistance can include supporting legal defense for employees who are detained or encounter other legal troubles arising from losing protections.
2. **Arrange employee-centered, supportive offboarding programs** for employees who are forced to leave the workplace because they are unable to renew their work authorization or their work authorization lapses while their renewal filings are pending.
    - 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 healthcare benefits can be extended despite termination.
3. If your company 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 offered only out of network, cover the difference.
4. **Host a regular call with senior management, HR, and directly affected individuals** to ensure that the company is being attentive to employees' needs.

5. **Host Know Your Rights (KYR) 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.
    - Designate an HR Point of Contact for anyone looking for additional resources or assistance. Ensure that they can access this point of contact confidentially.
    - 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.
    - Make trainings private, confidential, and voluntary. (For example, present training as a webinar instead of an in-person or video meeting where attendees are public.)
6. **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.
    - Carefully review with your HR leaders all applicable laws and regulations regarding employees' immigration status and citizenship. It is best to create opportunities for employees to come to you and volunteer information and engagement.
    - Remember that employees have no legal obligation to inform you of details about their immigration status or benefits.

SOLIDARITY AND SERVICE

1. **Support local organizations and nonprofits** hosting DACA renewal workshops, scholarships for undocumented and immigrant students, or other resources that benefit DACA recipients. Find a list of recommended organizations assisting DACA recipients here.
2. **Ask law firms you use whether they will agree now to provide pro bono legal assistance** or other support to local immigrant-serving organizations. You can find a list of organizations here.
3. **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 KYR training for a school, faith group, youth group, or other community organization.
4. **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.
5. **Join the "I Stand With Immigrants" initiative** to promote solidarity throughout the calendar year and publicly showcase your support for immigrants and immigration reform.

PAST SUPPORT FROM THE BUSINESS COMMUNITY



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."

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.

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."

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.

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."

Nelflix:

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

Uber:

Dreamer Resource Center