

DACA Renewals in the Wake of the Federal Court Preliminary Injunction

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Deferred Action for Childhood Arrivals (DACA) allows prosecutorial discretion to defer a deportation action of undocumented individuals brought to the United States as children. While it does not confer legal status and may be terminated at any time at the discretion of the Department of Homeland Security (DHS), DACA does afford the recipient the ability to obtain employment authorization.

The Trump Administration rescinded the DACA program on September 5, 2017. The University of California filed a complaint on September 8, 2017, challenging the rescission and seeking an injunction. On January 9, 2018, the U.S. District Court for the Northern District of California granted a preliminary injunction and directed the DHS to partially reinstate the DACA program under the same terms and conditions in effect before the program was rescinded.

Employers should encourage DACA employees to renew their DACA status by filing Form I-821D and Form I-765 for work authorization, along with the I-765 Worksheet accompanied by the \$410 fee. DACA recipients whose status expired on or after September 5, 2016, may still file a DACA application as a renewal request. If DACA status expired before September 5, 2016, or if DACA was previously terminated at any time, the recipient cannot request DACA renewal, but may file a new initial DACA request.

The United States Citizenship and Immigration Services (USCIS) will not process first-time DACA applications for individuals who have never been granted deferred action, and applications for advanced parole (travel document) will not be processed.

Based on the foregoing, it is recommended that DACA renewal applications be filed as soon as is practicable while this window of opportunity remains open.

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