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Businesses Unsettled by DACA Uncertainty

By *Finance New Mexico*

Barring congressional intervention, the Deferred Action for Childhood Arrivals (DACA) program is ending, and DACA recipients — or “Dreamers” — are subject to deportation when their work permits expire if they didn’t get an extension before the Oct. 5 deadline.

The demise of the program has created uncertainty among employers who are required to fire DACA recipients the day after their permits expire but risk discrimination charges if they act too soon to terminate — or even identify — DACA recipients on their payrolls.

Companies risk fines for employing ineligible workers. They’re also advised to prepare carefully for this sudden change in circumstances for up to 800,000 young people whose parents brought them into the United States without proper documentation when they were children.

A Delicate Question

All employees, regardless of their citizenship status, must fill out an I-9 form and provide multiple forms of identification to verify their eligibility to work in the United States. Noncitizen workers carry papers that authorize them to work here temporarily; the paperwork includes a code that specifies the basis for the permit, but employers are discouraged from using the code to identify DACA recipients.

Determining who is or isn’t a Dreamer is a sensitive exercise. An employer doesn’t want to risk penalties for keeping an ineligible worker on the payroll, but if he demands to see more paperwork than the worker showed to get the I-9 form or demands to know the worker’s immigration status, the employer could be accused of illegal employment discrimination.

Firing someone who’s still eligible to work or refusing to hire a Dreamer because her permit might expire soon is illegal, and a DACA recipient isn’t required to disclose that status when applying for a job or after getting the job.



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How to Handle It

Businesses are advised to retain I-9 records of employees whose work permits have expiration dates. When those dates near, the employer can remind the workers that the company needs to see proof of employment eligibility, such as a permit extension, after the permit expires — a process called reverification.

If the business's records are dated or incomplete, the owner could disseminate a companywide email urging anyone with an expiring work permit to take steps to maintain eligibility.

If a valued worker discloses that his permit is set to expire, the business could offer a leave of absence in lieu of a pink slip until the worker can provide proof of employment eligibility, until DACA is reinstated or replaced, or until the employee becomes eligible to work by some other route.

Depending on the worker's country of origin, she might be eligible for temporary protected status, which was designed to protect undocumented immigrants from deportation to countries they fled due to disease, violence, or natural disasters.

Local Concern

Business organizations have advocated for quick action to remove the uncertainty surrounding employment of workers affected by DACA. A recent letter to New Mexico's congressional delegation said, "the [Santa Fe] Chamber of Commerce urges your support to pass legislation that ensures stability for the DACA 'dreamers' and helps local employers plan and grow their businesses."

Until Congress acts, employers are encouraged to talk with an employment law attorney. More information can be found at the following U.S. Department of Homeland Security links:

<https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> and
<https://www.dhs.gov/news/2017/09/05/frequently-asked-questions-rescission-deferred-action-childhood-arrivals-daca>.

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