U.S. Department of Justice
Civil Rights Division
Immigrant and Employee Rights Section

Reminders for DACA Recipients and Employers that Work Authorization Continues After the Fifth Circuit's DACA Decision

On October 5, 2022, the Fifth Circuit Court of Appeals partially upheld a July 2021 district court decision finding that the original DACA program (established in 2012) was unlawful; however, the Fifth Circuit sent the case back for the district court to consider the Department of Homeland Security's new DACA regulation (issued in 2022). **As a result of this ruling, existing DACA recipients retain their grant of DACA and are allowed to reapply for (and receive) renewal, but the government cannot grant new DACA applications**.

The court ruling does not affect ICE's enforcement policies. Like the earlier district court ruling, the appeals court ruling does not require DHS or the Department of Justice to take any immigration, deportation, or criminal action against any DACA recipient, applicant, or any other individual that it would not otherwise take. In light of the appeals court's decision, we are re-issuing these reminders about employment discrimination and immigrant employee rights.

Reminders for DACA Recipients and Employers

- DACA recipients with current, unexpired Employment Authorization Documents (EADs) continue to be authorized to work.
- Workers who already have DACA can continue to renew their DACA EADs.
- USCIS has posted Frequently Asked Questions with guidance for DACA requestors and recipients.
- DACA recipients are not required to tell employers they have DACA.
- Employers are not expected to know which employees, if any, have DACA, and the latest appeals court decision (like the earlier district court decision) does not require employers to review Forms I-9, reverify employment authorization, or take any action at all.
- Employers are not required or encouraged to ask their employees or job applicants about their immigration status or whether they have DACA.
- Federal laws such as the Immigration and Nationality Act, Title VII of the Civil Rights Act of 1964, and 42 U.S.C. § 1981 protect employees from employment discrimination based on several factors, including their citizenship, immigration status, national origin, and race. State and local laws may offer additional protections to workers.
- Firing employees who have the legal right to work, such as DACA recipients with EADs, based on their immigration status, national origin, or assumptions about these characteristics may violate federal, state, or local law.

Reminders for Employers on Hiring New Employees

- Employers generally should not ask job applicants or employees for their specific citizenship or immigration status information. More information is available here.
- DACA recipients do not have to volunteer information about their immigration status to their employers.
- When hiring a new employee, employers are required to verify the employee's identity and authorization to work, not their immigration status. Employers use the Form I-9 for this process. More information about this process is available at I-9 Central and in USCIS's Handbook for Employers (M-274). The latest appeals court decision (like the earlier district court decision) does not change Form I-9 rules or processes.
- The Department of Homeland Security's rules for verifying an employee's work authorization explain that employers must accept documentation that reasonably appears to be genuine and to relate to the employee, and cannot reject documents because of a future expiration date. The appeals court decision (like the earlier district court decision) does not change this rule for existing DACA recipients and their Employment Authorization Documents.
- Employers should not question whether an employee's Form I-9 documentation is valid because of the employee's citizenship, immigration status, or national origin. Employers that treat employees differently in verifying work authorization based on these or other protected characteristics might violate federal law. More information about preventing discrimination is available here and here.

Reminders on When Employers Must Reverify Current Employees' Work Authorization

- Once an employer verifies a new employee's employment eligibility, the Department of Homeland Security (DHS) only requires employers to examine additional documentation from an employee that shows they continue to have the legal right to work in limited circumstances. These limited circumstances include when an Employment Authorization Document expires, or when the employee includes a date on the Form I-9 for when their employment authorization expires. More information is available here.
- The latest appeals court decision (like the earlier district court decision) does not change DHS rules for existing DACA recipients or any other employees. The court's decision is not a basis to ask employees to show documentation to reverify their work authorization.
- Depending on the circumstances, asking employees for documentation when not required based on their citizenship, immigration status, or national origin may violate federal law. More information is available here.
- The court decision does not require employers to review or audit their Forms I-9. If an employer decides to review its Forms I-9, it should do so in a non-discriminatory way. This may mean reviewing all Forms I-9 or a sample selected based on neutral criteria. Employers should not single out Forms I-9 based on employees' citizenship, immigration status, national origin, or any other protected basis. More information is available here.

Reminders for Employers That Use E-Verify

- Employers that use E-Verify must follow DHS rules and use E-Verify consistently, without regard to an employee's citizenship, immigration status, or national origin. Employers that violate these rules run the risk of losing access to E-Verify and violating federal law. More information on avoiding discrimination is available here.
- Employers that use E-Verify generally are not allowed to run current employees through E-Verify. In addition, employers are not allowed to run employees through E-Verify because they have DACA, or because of assumptions or suspicions about employees' immigration status or national origin. The most recent appeals court ruling (like the earlier district court ruling) has no effect on a DACA recipient's ability to receive an "employment authorized" E-Verify result.

How DACA Recipients Can Get More Information

- DACA recipients and other workers can learn more about their rights in the Form I-9 process here and information on their rights in the E-Verify process here and here. Workers can call USCIS at 1-888-897-7781 (TTY 1-877-875-6028).
- Workers with questions about employment discrimination based on citizenship, immigration status, or national origin can visit www.justice.gov/ier or call the Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section at 1-800-255-7688 (TTY 1-800-237-2515). Callers can remain anonymous and language services are available.

How Employers Can Get More Information

- Employers can learn more about the Form I-9 at I-9 Central or by calling USCIS at 1-888-464-4218 (TTY 1-877-875-6028).
- For more information about how to avoid unlawful employment discrimination based on citizenship, immigration status, or national origin, employers can visit www.justice.gov/ier or call the Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section at 1-800-255-8155 (TTY 1-800-237-2515). Callers can remain anonymous and language services are available.

Justice Department, Immigrant and Employee Rights Section
Worker Hotline 1-800-255-7688
Employer Hotline 1-800-255-8155
Mon-Fri 9am-5pm ET
Calls can be anonymous and language services are available.
www.justice.gov/ier | www.justice.gov/crt-espanol/ier
TTY 1-800-237-2515