

Supporting DACA Team Members: A Guide for Employers

Concrete ways employers can support their DACA-impacted employees, interns and members of your communities in a time of uncertainty

IN REGARD TO THE FIFTH CIRCUIT COURT CASE DECISION ON DACA

<https://www.fwd.us/news/daca-employer-guide/>

BACKGROUND

On July 16, 2021, Texas federal court Judge Hanen published his opinion on the DACA case, Texas v. United States, which challenged the legality of the DACA policy. Judge Hanen's opinion ruled that DACA is not a lawful policy, but because of expected appeals he stayed his ruling for existing applicants, allowing those with existing DACA to continue to renew. Since this decision, no first-time initial DACA requests have been granted, rather they have been held without a determination. The court order did not invalidate any existing DACA work permits or travel authorization, including advance parole.

In July of 2022, the Fifth Circuit Court held oral arguments on this case, and supplemental briefs were submitted by September 1st, 2022. As of October 5th, 2022, the Fifth Circuit ruled in support of the Federal District Court's prior ruling that DACA is illegal. However, the Fifth Circuit also kept in place the District Court's partial stay on that ruling for existing DACA applicants — which means that **for existing DACA recipients, DACA renewals can continue and their DACA and work authorization remain valid**. This means those who have a work permit today, it remains; and programs like Advanced Parole remain. It also unfortunately means that DHS will continue to not process any first-time DACA applicants applications, which is the current status quo.

This current threat the program faces from the 5th Circuit are the most serious challenges to-date. **The urgency for Congress in 2022 to act is higher than it has ever been**. It is good news for existing DACA recipients that they have some more time to continue to renew, but to see this as anything but a clear indication on how the courts plan to terminate DACA is a mistake.

Congress absolutely must act right now or else the consequences will be disaster.

We have outlined the steps that employers can take now to prepare and support members of their teams.

RECOMMENDATIONS

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. Employers can support their DACA recipient employees and engage in a variety of ways. The following suggested actions include ways to support DACA recipient employees within your company or organization, and support the DACA policy and potential beneficiaries more fully.

- 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.

- Resources, including a Legal Service Directory, are available to help with the DACA renewal process at www.InformedImmigrant.com.

2. 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.

- Companies with contacts at [Senate](#) and [House](#) offices and the Administration should urge them to support legislation providing permanent protections for Dreamers.

3. 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; Facebook, Instagram and Twitter.

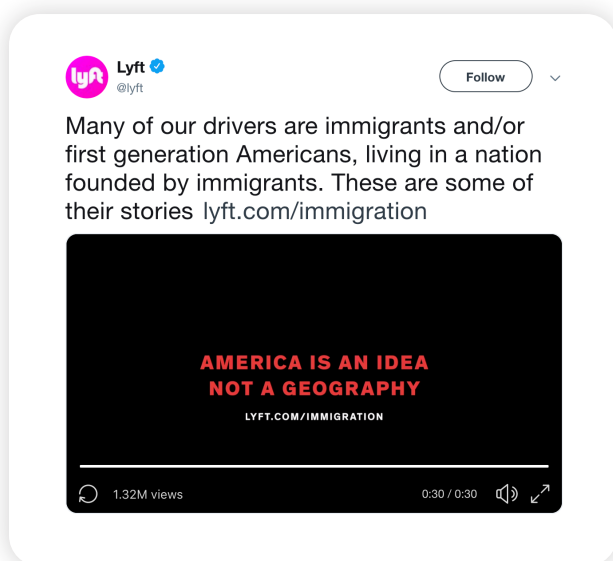
4. Engage in proactive press efforts to highlight your company’s support for DACA recipients.

- 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.

5. 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



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.”

NETFLIX

Netflix:

[10 Ways to Support your Immigrant Coworkers in the U.S.](#)

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.”

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.



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.”

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.”

Uber

Uber:

[Dreamer Resource Center](#)

- 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). 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.
 5. For employees whose work authorizations are close to expiration, review company policies to determine availability of separation benefits and continuation of health benefits.
 6. 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.
 7. **Host a regular call** with senior management, HR, and directly affected individuals to ensure that the company is being attentive to employees’ needs.
 8. **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.

9. **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.
10. 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 June
4. **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](#).
5. **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