

# Electronic Alert

Volume 20, Issue 17

September 6, 2017

## **Rescission of DACA and the Impact on Employers** **By Tyler Volm**

The Trump Administration announced that it is ending the Deferred Action for Childhood Arrivals (“DACA”) program put in place under President Obama in 2012. DACA allows people who arrived in the United States as undocumented immigrant children to avoid deportation and to obtain two-year renewable work authorizations. The current date set for rescission of DACA is March 5, 2018. The six-month window is intended to give Congress time to pass legislation on the issue, and legal challenges to the rescission are already in the works.

Should the current plan move forward, the immediate impact for many employers is the potential for labor shortages. Current statistics indicate that nearly 700,000 of the 800,000 total DACA recipients are currently legally employed. If their work permits expire and those recipients face deportation, employers will be scrambling to find and train replacement workers, with certain industries and states hit particularly hard.

The mass deportation of DACA recipients may have a serious impact on the general economy as well, with some estimates of the cost to employers exceeding \$6 billion. These expenses take a variety of forms, including decreased productivity, the cost of recruiting and training new hires, administrative costs, as well as potential legal fees should the employer voluntarily elect to defend the employee or employees (which some larger companies have already promised to do). There is also the impact of lost tax revenue, since DACA recipients currently pay federal, state, and local taxes as part of the program.

The most likely approach that the Trump Administration might take would be to stop approving new DACA applicants, and to stop renewing current recipients’ work permits. All work permits issued to DACA holders would continue to be valid until the expiration date on the permit. The current deadline to file a DACA application for renewal is October 5, 2017, and the initial/renewal DACA applications that were filed as of September 5, 2017, will continue to be adjudicated in the normal course. DACA holders should continue to save evidence of their continuous U.S. presence, including school transcripts, household bills, rent or mortgage receipts, medical records, taxes, and paystubs.

Employers face legal liability if they continue to employ workers after the expiration of their work permits, but also face the risk of discrimination claims if they improperly dismiss workers. DACA prohibits employers from discriminating against foreign-born applicants purely because they have temporary authorization. Therefore, if DACA is rescinded as planned, employers will be the ones that will have to implement the policy through carefully reviewing the status of their employees’ current work permit authorizations and pending expiration dates, and terminating DACA recipients once their work authorization expires (unless they are otherwise authorized to work in the U.S.).

The Department of Homeland Security’s Frequently Asked Questions page can be found [here](#). In the meantime, employers should track the progress of the rescission process and keep an eye on important timelines.