

FREQUENTLY ASKED QUESTIONS DACA and Your Workplace Rights

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NILC has received many questions about the Deferred Action for Childhood Arrivals (DACA) program. Many of them are about your rights in the workplace, both when you are applying for deferred action and after your application has been approved. This FAQ is intended to answer your questions about DACA and your workplace rights and to provide information that may be helpful when you apply for and after you've been granted deferred action under the DACA program.

If you've already been granted deferred action, received your employment authorization document (EAD), and have urgent questions about your current job, see "Maintaining your current job," pp. 7–9.

Like all of NILC's resources, this FAQ *does not replace the advice of a qualified lawyer*. You should contact a lawyer if you have questions about your particular situation. NILC staff are also available to give you more information on the topics discussed below, but are not available to give you legal advice or represent you in court.

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Background: The DACA program

On June 15, 2012, President Barack Obama announced that, under a policy that's now called Deferred Action for Childhood Arrivals, the U.S. Department of Homeland Security (DHS) would no longer deport certain young undocumented people. DACA has two important parts:

- **PART 1:** Under DACA, DHS will not deport certain undocumented people and will give them temporary permission to stay in the United States. This temporary permission to stay in the U.S. is called "deferred action."

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- PART 2: People who are granted deferred action through DACA will be eligible for an EAD or “work permit,” meaning they can work legally in the U.S. In other words, they can work “with papers.” (NOTE: Though people often refer to the employment authorization document, or EAD, as a “work permit,” in this FAQ it will always be called “EAD.”)

As of now, each part of DACA — the grant of deferred action and the EAD — will be good for two years. At the end of the two-year period, DACA recipients can apply to renew deferred action and their EADs.

Do you want to see if you may be eligible for DACA? Check out NILC’s [Frequently Asked Questions](#) or [Preguntas Frecuentes](#) for basic information about whether you may be eligible.¹ You may also use the online “[Requesting Deferred Action](#)” tool that’s available on the Own the Dream / Únete al Sueño website to see if you might qualify.²

Employment records and applying for DACA

- Should I include any documents from my work, such as pay stubs, as part of my DACA application?

It depends. You are not required to supply any employment records (such as pay stubs) as part of your DACA application. And for most applicants, there is no reason to include them. *Generally, if you can prove that you have been in the U.S. without using pay stubs, you should.*

However, that may be difficult in some cases. As part of your application, you must prove that you have been in the U.S. continuously for the past five years and that any departures from the U.S. during this period were brief, casual, and for innocent reasons. Some workers may have difficulty proving that they have lived in the U.S. continuously for the past five years. For example, farm workers or other workers who live in temporary or employer-provided housing may not have many other records to show that they have lived in the U.S. continuously for that time period.

There are many kinds of documents you can use to prove that you have lived continuously in the U.S. for the past five years. You can use utility bills, phone bills, school records, doctor’s records, hospital bills, or even receipts of remittances (*remesas* or *envíos*) sent to relatives or friends in your home country through the years. If you have saved copies of your work schedules through the years, you might be able to use them. You do not need to have documents for every month of this period, but lengthy gaps of time for which you have no documents may be a problem.

You can also use two or more affidavits, or declarations, to prove that you were in the U.S. for any lengthy period of time for which you don’t have any other evidence. An affidavit

¹ *Frequently Asked Questions*: www.nilc.org/FAQdeferredactionyouth.html; *Preguntas Frecuentes*: www.nilc.org/FAQdeferredactionyouthSp.html.

² “Requesting Deferred Action”: www.ownthedream.org/deferred-action/.

is a written statement, signed under penalty of perjury, from someone who has personal knowledge of your presence in the U.S. If, for any part of the required five years of continuous presence, you do not have good evidence to show that you were in the U.S., you can submit at least two affidavits from people who can verify that you were in the U.S. during that time. You may also use affidavits to prove that a departure from the U.S. was brief, casual, and innocent.

However, some people *only* have employment records to prove that they have been living in the U.S. continuously. If that is true for you, you may want to use proof from your work to show that you have been in the U.S. continuously. *If your pay stubs or other work documents contain a Social Security number or name that is not yours, talk to an attorney before submitting these documents as part of your application.*

■ **Should I tell my supervisor or coworkers my immigration status? Or that I'm applying for DACA?**

Your immigration status is *personal, private* information, and generally you should not share this with anyone other than your attorney. You especially should not tell your employer or anyone at your job that you are applying for DACA. If you do, you may risk being fired.

You are *not* required to tell your employer that you are applying for DACA.

You are *not* required to tell anyone at your job — including line supervisors, managers, human resources staff, or crew leaders — that you are applying for DACA.

Your boss or supervisor *should not ask you* if you are applying for deferred action. If they do, you should tell them you are not comfortable answering that question. *Your employer should not try to force you to answer.* NILC is happy to strategize with you about how to protect your rights in such situations.

Under immigration law, employers have a responsibility to make sure that they do not employ unauthorized workers. If an employer learns that you are ineligible to work in the U.S., the employer has an obligation to fire you. If you tell your employer that you are applying for DACA, *the employer will probably think that you are not eligible to work legally* in the U.S. Even though you will be eligible to work legally once you receive deferred action and an EAD, you would be telling the employer that you are currently ineligible. Because of this, the employer might feel the need to fire you in order to avoid violating immigration law.

This can be a hard situation, especially if you have a friendly relationship with your boss. If you and your employer are good friends, you might feel tempted to tell him or her that you are applying for DACA. However, *if you share this information, you risk losing your job.*

■ **Should I ask my boss for documents that help prove that I have lived continuously in the U.S. for the past five years?**

Generally, if you can prove that you have been in the U.S. without using employment documents, you should. If you are going to ask your employer for a letter confirming your employment, you have to be very careful about how you ask. You need to ask in a way that does not alert your employer to your immigration status. If you tell your employer that you

are applying for DACA or otherwise give the employer information about your immigration status, you may be fired.

If you must get information from your employer:

- Do not tell your employer that you are applying for DACA.
- Do not mention that your request for information is for immigration purposes.
- Request a letter or other documents that confirm the dates that you have been employed at the job.
- If your employer asks why you are making this request, answer that you would rather not say why and that it relates to a private matter.

Social Security number and the EAD

- Should I list my Social Security number (SSN) on the DACA request form (Form I-821D) or on the application for employment authorization (Forms I-765 and I-765WS)?

U.S. Citizenship and Immigration Services (USCIS) has said that you should only list an SSN that was properly issued to you by the Social Security Administration (SSA). Do not list an Individual Taxpayer Identification Number (ITIN) — or any other SSNs that you may have used — on your DACA or employment authorization application forms.

- How long is the wait for processing? When do I get my employment authorization document?

Soon after your DACA request is approved, you will receive your EAD in the mail.

- What is an EAD, exactly?

An EAD is an employment authorization document (also known as a work permit or I-766) that tells your employer you are authorized to work in the U.S. It can also be used as an ID.

As part of applying for DACA, you will apply for an EAD using Forms I-765 and I-765WS. After the government approves your application, you will be issued an EAD card that looks similar to the photo at right.

An EAD is not the same thing as a passport or a Social Security card. This document proves *only* that you may work legally in the U.S.



- Do I need to apply for a Social Security number now? If so, how do I apply?

If you receive deferred action and an EAD from the government, you can apply for a Social Security number from the Social Security Administration. You must visit an SSA office

in person to apply for an SSN, bring your EAD, and also prove your age and identity. There are offices across the country. For more information, see SSA’s publication “[Social Security Number—Deferred Action for Childhood Arrivals](#).”³

If you have been issued an EAD, you may work legally even if you don’t apply for an SSN. The EAD *alone* proves that you can work legally. However, it is usually a good idea to apply for an SSN. An SSN:

- Can help you obtain a state ID card.
- Can make it possible for an employer to do a background check on you, which may be necessary for certain jobs.
- Can be an alternate form of ID.
- Can make it easier to apply for loans.
- Can make it easier to rent an apartment.
- Makes it possible to properly complete a W-4 federal tax withholding form.

The hiring process and beginning employment

- If I have received my employment authorization document, may I apply for jobs?

Yes. After you are hired by an employer, but within the first three days of work, the employer should ask you to complete an I-9 employment eligibility verification form and to present documents that prove you are eligible to work legally in the U.S. At that time, you can present your EAD. Your employer might make a copy of your EAD.

- When I interview for a job, do I need to tell the person interviewing me that I received deferred action or how I received an EAD?

No. You do not need to tell your employer that you received an EAD through the DACA program, and the employer should not ask.

- What is an I-9 form?

Under U.S. law, employers have an obligation to hire only individuals with valid work authorization. Employers use the I-9 form to document that an employee is authorized to work in the U.S.

Therefore, after you are hired, your employer must verify your identity and authorization to work legally in the U.S. To prove your identity and employment authorization, you must present either one document that shows both your identity and employment authorization (also called a “List A” document), or you must present a combination of documents, one that proves your identity (that you are who you say you are; also called a “List B” document) and another that proves you are work-authorized (eligible to work legally in the U.S.; also called a

³ https://www.socialsecurity.gov/pubs/deferred_action.pdf.

“List C” document). The lists of acceptable documents — Lists A, B, and C — are available on USCIS’s website.⁴

Your employer must check your identity and employment authorization documents and complete an I-9 form. Your employer will then ask you to fill out and sign the I-9 form. Employers keep all I-9 forms in their files. Your employer must show the completed forms to enforcement officials from the U.S. Department of Homeland Security if asked for them.

Since the EAD is a “List A” document, it proves both your identity and work authorization. Therefore, when you fill out the I-9 form, *if you show your employer your EAD, you don’t have to show the employer any other documents.* In a special [Guidance for Employers](#) about DACA, USCIS says that, when an employer gives an employee the I-9 form to fill out and the employee presents his or her EAD, the employer should not ask for any additional proof that the employee is authorized to work.⁵

Sometimes employers don’t do what they’re supposed to under the law — they don’t ask workers to complete an I-9 form or show identity and employment authorization documents. It is the *employer’s* responsibility to make sure that the I-9 process is completed. If your employer does not ask you to complete an I-9 form and show your document(s), you have no responsibility to do either.

Do you have questions about completing the I-9 form? See NILC’s [Proving Work Authorization & Reverification](#) and the resources available from our “[I-9 Antidiscrimination Protections](#)” webpage for more information.⁶ Sometimes employers use an online system called E-Verify instead of a paper I-9 form. For information about your rights when an employer uses E-Verify, see the resources available from our [E-Verify > Materials for Workers](#) webpage.⁷

■ What is a W-4?

The W-4 form is an Internal Revenue Service (IRS) document that an employer must have you complete shortly after you are hired. The W-4 is important for two reasons: First, it allows the government to determine the correct amount of taxes that should be withheld from your paycheck. Second, it helps the government know how long you have been working and how much you have contributed to the Social Security Trust Fund (SSTF). When the government withholds money from your paycheck, part of it is put into the SSTF. In the future, if you become a lawful permanent resident or citizen of the U.S., you may be able to get credit for the amount of money you contributed to the SSTF. This can help you when you retire or become disabled.

After you complete a W-4, your employer keeps it on file. Your employer will use the information from the W-4 to create a W-2 form for you. You use the W-2 form to complete

⁴ <http://tinyurl.com/3ncufmd>, or google “Form I-9 acceptable documents.”

⁵ www.uscis.gov/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA-Fact-Sheet-I-9_Guidance-for-employers_nov20_2012.pdf, p. 1.

⁶ www.nilc.org/provworkauth.html and www.nilc.org/i9eev.html.

⁷ www.nilc.org/materialsev.html.

your income tax return, if you are required to file one. Your employer should send you a W-2 form before January 31st of each year. The employer will also send some of the information from the W-2 for to the SSA and the IRS. The W-4 and W-2 forms are not immigration documents.

■ **Can I now join a union?**

Authorized and unauthorized workers can join a union or become members of a workers' center. Across the country, workers are standing up together to demand their rights in the workplace. If you are interested in *joining a union*,⁸ supporting a *campaign for working people*,⁹ or finding a *local workers' center*,¹⁰ you can do so whether or not your DACA application is approved.

Maintaining your current job

■ **May my current employer keep employing me after I receive my employment authorization document?**

Yes. Once you have your EAD, your employer can keep you on the job without violating immigration law. In fact, if your employer fires you, that could be a violation of the Immigration and Nationality Act (INA) or Title VII of the Civil Rights Act of 1964 (Title VII) (more information about this is provided below).

■ **May my employer check my new EAD? Should I show the EAD to my employer?**

U.S. Citizenship and Immigration Services will not alert your employer that you have received an EAD. So if you do not tell your employer that you have received an EAD, it is unlikely that the employer will know you have one. Once you receive your EAD, you do not have an obligation to show this document to your employer.

If you *do* show your EAD to your employer and the name and birth date on the EAD are different from the name and birth date on the I-9 form your employer has on file for you, the employer is required to have you fill out a new I-9 form. Your employer is also required to have you complete a new I-9 form if your old I-9 form contains a Social Security number that is different from your new Social Security number. And your employer is required to have you complete a new I-9 form if, in the "attestation" portion of Section 1 of your old form, you check-marked an immigration or citizenship status or provided an "alien number" that doesn't match the status or alien number that's indicated on your EAD.¹¹ (For example, if your old I-9 form has a checkmark next to "A citizen of the United States.")

⁸ www.unionplus.org/about/labor-unions/how-to-join.

⁹ www.jwj.org/about/index.html.

¹⁰ www.ndlon.org/en/our-members; www.iwj.org/network/workers-centers.

¹¹ www.uscis.gov/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/DACA-Fact-Sheet-I-9_Guidance-for-employers_nov20_2012.pdf, p. 2.

For more information about issues related to presenting your new EAD to your employer, see “I told my employer that I now have an EAD or a new Social Security number. The employer fired me. What are my rights?,” on page 9.

Typically, once you are hired and have completed the I-9 or E-Verify process, your employer should not ask to see your EAD or any other identity or employment eligibility verification document again until the time a document you provided expires. When an employer asks to see a document again, this is called *reverification*. Your employer may reverify your employment eligibility only under certain circumstances. Your employer may reverify your employment eligibility — and ask to see your document again — if the document is about to expire or already has expired. But if your employer singles you or a certain group of workers out for reverification without having some legitimate reason — such as the expiration of your document — the employer may be engaging in *illegal reverification*.

If your employer asks to see some workers’ documents but not others’, the employer may be discriminating on the basis of their citizenship or immigration status or their national origin. Under immigration law, such discrimination is illegal. If employers reverify workers, they must treat the workers the same regardless of their citizenship or immigration status or of their national origin. If the employer treats workers differently, such as by reverifying some of them but not others, the employer’s action could be illegal.

If this occurs in your workplace, you can contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices (1-800-255-7688 or www.justice.gov/crt/about/osc/). Also feel free to contact NILC for more information about these issues.

The law with respect to what employers may or may not do when reverifying employees’ identity and work authorization is complex. For example, your employer might violate labor law — the National Labor Relations Act — if the employer reverifies everyone in the workforce during a labor dispute (a labor dispute is a disagreement between an employer and workers about work-related issues). Or your employer might violate another antidiscrimination law — Title VII — if the employer reverifies workers based on their race or ethnicity. If you want to learn more about workplace reverification, see NILC’s [Reverification of Employment Eligibility: Frequently Asked Questions](#).¹²

■ Should I correct information on my W-4 form?

It is important that all the information on your W-4 form be correct. It helps the government know how long you have been working and ensures that your contributions to the Social Security Trust Fund are recorded. This can help you when you retire or become disabled. If you would like information about how to correct your Social Security earnings record or want to discuss whether you should correct the information on your W-4, please contact NILC.

¹² www.nilc.org/document.html?id=352.

- I told my employer that I now have an EAD or a new Social Security number. The employer fired me. What are my rights?

It depends. Your rights may be different depending on several things, including whether or not you gave your employer false documents or false information when you were first hired.

If you did not complete an I-9 form and did not provide false information when you were first hired, your employer may not fire you just because you now present an EAD. Nor may your employer fire you because of where you were born, where you come from, or your native language or accent. If you show your employer an EAD, your employer may not discriminate against you on the basis of your not being a U.S. citizen. Employers who do so may be violating the antidiscrimination provisions of immigration law or Title VII. Depending on the facts of your case and the laws broken by your employer, you may have the right to reinstatement (the right to return to the job) and to damages (money to compensate for harm you have suffered).

But the situation will be different if you completed an I-9 form when you were first hired. For example, if your employer discovers that you lied and presented false documents at the time you were hired, the employer may be able to legally fire you. If the employer's policy is to fire anybody who is dishonest in the workplace *and* the employer has enforced the rule consistently for all workers, the employer may be able to legally fire you. Therefore, *you should think carefully about whether to disclose the fact that you now have an EAD or a new SSN to your employer.* If you have questions, feel free to contact NILC or the Office of Special Counsel for Immigration-Related Unfair Employment Practices (1-800-255-7688 or www.justice.gov/crt/about/osc/).

In addition, if you belong to a labor union, you will likely have additional rights.

- If I belong to a labor union, can they help?

Yes. If you belong to a union, your union representative should be able to help you navigate some of the issues discussed above, including any rights you have under your collective bargaining agreement. You should contact your union representative with any questions that you have.

Abbreviations used in this FAQ

- DACA** Deferred Action for Childhood Arrivals
DHS U.S. Department of Homeland Security
EAD Employment authorization document, or work permit
FAQ Document that lists and answers frequently asked questions
ID Identification, or identification document
INA Immigration and Nationality Act
IRS Internal Revenue Service

ITIN Individual Taxpayer Identification Number

NILC National Immigration Law Center

SSA Social Security Administration

SSN Social Security number

SSTF Social Security Trust Fund

Title VII Title VII of the Civil Rights Act of 1964

USCIS U.S. Citizenship and Immigration Services

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