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## **WHAT DOES THE END OF DACA MEAN FOR EMPLOYERS?**

Today, President Trump announced that he was rescinding the “Deferred Action For Childhood Arrivals Program”, also known as DACA. The DACA program was created by President Obama in a June 15, 2012 memoranda. DACA allowed for certain undocumented immigrants, brought to the U.S. as children, to register for deferred action from deportation and then become eligible for temporary employment authorization based upon their registration. Those approved under the DACA initiative received Employment Authorization Documents (EAD’s) that allowed them to work in the United States without restriction for a temporary period listed on the EAD itself, up to two years. DACA registration and the EAD have been renewable in the same increments since the program was announced. Today’s announcement includes provisions for phasing out the DACA program and approvals of currently pending DACA registrations and employment authorization documents. This announcement naturally creates several questions for U.S. Employers, many of which we answer below.

### **How Do I Know if I Have Employees Working For My Company Pursuant to a DACA EAD?**

You complete a Form I-9 for every new employee at the time they are hired<sup>1</sup>. The new employee provides documentation to complete the Form I-9 that proves their identity and ability to work legally in the United States. One such document is the EAD (Form I-766). EAD’s that are issued to DACA recipients have “C33” listed on them under “Category”. As with all EAD’s presented to complete Form I-9, you should have noted when the EAD expires at the time of I-9 completion and have a reminder set in your records to reverify the employee’s work authorization no later than the EAD expiration date. Employers who participate in E-Verify are required to make a copy of the EAD and retain it with the record results. I also recommend all employers make a copy of the documents presented to complete Section 2 of Form I-9. Review your list of employees working pursuant to an EAD, and check the category code on your copy of their EAD document to determine if any have “C33” listed on them.

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<sup>1</sup> The I-9 Form is required for every person hired in the U.S. after November 6, 1986.

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***I Have Three Employees Working for My Company with DACA EAD's. What Can I Do for Them?***

If you discover that you do have employees working pursuant to an EAD issued under DACA, you can help them by letting them know about today's rescission of the DACA program by the Trump Administration. If their EAD expires prior to March 5, 2018, you can urge them to file to renew their DACA status and EAD now if they have not already done so. DACA renewals that have already been filed will be adjudicated under the DACA program standards. If they have not yet filed to renew their DACA status and EAD and their current EAD expires prior to March 5, 2018, they have until October 5, 2017 for USCIS to receive their renewal applications.<sup>2</sup> For employees whose DACA EAD's expire after March 5<sup>th</sup>, giving them as much advance notice as possible of the recession of the DACA program and their inability to renew their DACA EAD will provide them an opportunity to explore if there are any other forms of relief available to them under U.S. immigration law, and apply for those benefits in advance of their current EAD expiration.

***Do I have to fire my employees with DACA work permits now or when their EAD expires?***

No. As part of the phasing-out of the DACA program, any currently valid EAD's issued under DACA remain facially valid for continued employment until the date of expiration listed on the EAD itself. When an employee's EAD issued under DACA is getting ready to expire, treat them as you would any other employee working in the United States pursuant to temporary work authorization. Give them as much advance notice as possible that they will have to provide new evidence of work authorization no later than the expiration date of their current EAD and provide them the opportunity to bring to you another List A document or a List B and List C document from the document lists on the Form I-9<sup>3</sup>. These employees may have qualified for another form of U.S. work authorization since their last DACA EAD was approved, so make certain you provide them ample opportunity to provide acceptable proof of work authorization (as listed on Form I-9) prior to their current EAD expiring. It is recommended that you seek the advice of legal counsel if you are not certain an employee has provided the necessary documents to prove U.S. work authorization. Employers who allow their employees to continue to work for them when the employee cannot provide evidence of current U.S. work authorization sufficient to complete or re-verify their Form I-9 when their current EAD expires risk civil and criminal sanctions for knowingly employing a(n) unauthorized worker(s).

If you have any questions that require the advice of legal counsel, please call or email Sarah E. Buffett, Esq. at (980) 272-1952 or [sarah@buffettimmigration.com](mailto:sarah@buffettimmigration.com)

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<sup>2</sup> USCIS must have received the DACA renewal and EAD application by October 5<sup>th</sup> - an October 5<sup>th</sup> postmark is not sufficient. It is recommended that renewals are filed as soon as possible, but no later than October 2, 2018 via overnight or Express Mail to allow the filing to be processed by the USCIS mailroom by October 5<sup>th</sup>.

<sup>3</sup> All new I-9 Forms and Section 3 Re-verifications completed after September 17, 2017 must be done on the newest version of the form, with a revision date of 07/17/2017.