

President Obama's Executive Actions on Immigration

HOW THEY IMPACT WORKERS' RIGHTS

JANUARY 2015

On November 20, 2014, President Obama announced policy changes to help fix parts of our dysfunctional immigration system. These policy changes include creating the Deferred Action for Parents of Americans (DAPA) program, expanding the existing Deferred Action for Childhood Arrivals (DACA) program, and making various other reforms to immigration enforcement.¹ Among these enforcement reforms are protections for immigrant workers, including expanding the certification processes for U and T visas and creating a federal interagency working group to promote the consistent enforcement of labor, employment, and immigration laws and to protect workers.

U and T Visa Improvements

Under the president's announcement, the U.S. Department of Labor (DOL) will expand the list of crimes for which the agency will provide a certification in support of a U visa. The DOL also will begin providing certifications for T-visa applications.² Because the DOL, through its workplace investigations, often makes contact with workers who have suffered workplace abuse, the agency is well-positioned to provide certification to workers who have been the victims of crimes.

U Visas

Under the president's announcement, the DOL will provide certification in support of a U visa for three additional qualifying crimes if they arise in the workplace and are related to a violation of a law that the DOL enforces: *extortion*, *forced labor*, and *fraud in foreign labor contracting*. These crimes are in addition to the qualifying crimes for which the DOL has already been providing certification since 2011, including involuntary servitude, peonage, trafficking, obstruction of justice, and witness tampering.³

¹ For more information about the president's announcement, including factsheets on administrative relief, expanded DACA, and changes to immigration enforcement policies, see www.nilc.org/relief.html.

² A DOL factsheet on these policy changes is available at www.dol.gov/dol/fact-sheet/immigration/u-t-visa.htm. For more information about how the U visa can help workers, see NILC's "The U Visa and How It Can Protect Workers," www.nilc.org/u-visa-protect-workers-2010-09-15.html. For more information generally about U and T Visas, see www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes.

³ For more information about the DOL certification process, see www.dol.gov/whd/FieldBulletins/fab2011_1.htm.

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T Visas

Under the new reforms, the *DOL will issue T-visa certifications for survivors of trafficking* if the DOL detects human trafficking activity when it conducts workplace investigations. The DOL will publish a notice in the Federal Register delegating the authority to issue T-visa certifications to the department's Wage and Hour Division and will then update its protocols and procedures to reflect these changes.

The DOL will begin to consider both U-visa certification requests for its newly expanded list of crimes and T-visa certification requests in early 2015.

Creation of an Interagency Working Group

The president announced the creation of the Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The working group will be comprised of the U.S. Department of Homeland Security, the U.S. Department of Justice, the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, and the National Labor Relations Board.

The working group's purpose will be to promote workers' cooperation with labor and employment law enforcement agencies *without fear of retaliation* and to ensure that worker protections are not undermined by the involvement of immigration authorities in labor disputes.

The working group also will strengthen the processes for staying the removal of, and providing temporary work authorization for, undocumented workers who assert their workplace rights and for cases involving a workplace investigation or proceeding. The working group will provide workers and their advocates with opportunities for engagement.

Continued Applicability of Prosecutorial Discretion for Workers Engaged in Labor Disputes

The president's announcement affirmed the ongoing applicability of the June 17, 2011, Dept. of Homeland Security memo that provides for prosecutorial discretion for certain victims, witnesses, and plaintiffs, including workers involved in a labor dispute or who are otherwise asserting their civil rights.⁴ This memo provides guidance to U.S. Immigration and Customs Enforcement personnel about when to exercise prosecutorial discretion, and it includes criteria that specifically take into account immigrant workers who have been the victims of workplace abuse and those attempting to enforce their labor rights.

INFORMATION ON NILC'S WEBSITE, at www.nilc.org/relief.html, includes factsheets on administrative immigration relief and changes to immigration enforcement policies, as well as guidance on how to prepare to apply for immigration relief under the programs the president announced this past November.

If you have questions about workers' rights issues, contact Josh Stehlik, NILC workers' rights attorney, at 213-674-2817 or stehlik@nilc.org.

⁴ The memo is available at www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf. For more information about the memo, see NILC's "Prosecutorial Discretion and Immigrant Workers," www.nilc.org/PDImmworkers.html.