

FREQUENTLY ASKED QUESTIONS

DEFERRED ACTION FOR WORKERS IN LABOR DISPUTES

What is the new process that the Department of Homeland Security (DHS) announced for workers?

DHS has created a new “streamlined process” for workers involved in a labor dispute at their workplace to request temporary protection from deportation and a work permit. The purpose of this process is to promote fairness, safety, and a level playing field for all workers in the U.S. by strengthening labor agencies’ ability to enforce labor and employment standards.

What type of protection does it offer?

The protection from deportation comes in the form of “deferred action”, and it lasts for two years. Deferred action is a commitment from DHS not to pursue deportation against an individual for a specific period of time. Individuals who receive deferred action are eligible to receive a work permit if they can demonstrate a need to work. Deferred action may be renewable if the labor agency’s investigation or interest in the worksite continues. For this process to work, two agencies need to work together. Those agencies are the federal, state or local labor agency, which investigates and enforces labor law, and DHS, which enforces immigration law. The labor agency has to tell DHS that it is investigating the labor dispute and that it needs noncitizen workers at the worksite to be protected from deportation in order to assist with the investigation. The labor agency sends a letter (sometimes called a “Statement of Interest”) to DHS describing the worksite and the affected workers, and people who fall within that description are then eligible to apply individually for deferred action.

Who is eligible?

To be eligible, a worker’s current (or possibly former) employer must be the subject of an open investigation at a labor agency AND the labor agency investigating the labor dispute must submit a letter to DHS supporting deferred action for those workers.

DHS has not set out other eligibility requirements aside from a worker needing to fall within the

scope of workers described in a labor agency’s statement of interest. Any undocumented worker can apply - whether they are in deportation proceedings, have a removal order, or have never had interactions with ICE or the immigration courts. Everyone can use the same process. However, this is a discretionary form of relief, which means that DHS can decide on a case-by-case basis whether or not to grant deferred action, and can deny it for any reason.

What is a labor dispute?

For the purposes of this process, a labor dispute is when a worker or group of workers at a particular worksite report a labor or employment law violation to a federal, state, or local agency that initiates an investigation. For example, if an employer is not paying overtime, not providing the right number of breaks, forcing people to clock out before they have actually stopped working, or is not providing adequate safety equipment, the employees might complain to the employer and might also report the violation to a local, state, or federal labor agency. If you believe that your employer is violating your workplace rights, contact a local worker rights organization, such as a workers center.

What if my workplace is already involved in a labor dispute?

If you are already involved in a labor dispute that is under investigation, but the labor agency has not sent a statement of interest to DHS, your local workers’ center or a reputable legal service provider may also be able to assist you with requesting one.

What role does the labor agency play in the deferred action process?

An agency that enforces labor law (like the Department of Labor, or a state or local agency) has to issue a letter directly to DHS. The letter should say that the agency is investigating a particular worksite and should name the worksite. The letter should explain that workers at the worksite need protection from deportation in order to help with the investigation and identify which groups of workers are part of the investigation. Note that the labor agency will not issue a letter on its own—workers or advocates must request it based on certain factors such as the workers’ fear of retaliation and the government’s interest in enforcing the labor laws that have been violated.

For example, if a labor agency is investigating a construction company for not paying its construction workers overtime from June 2020 to July 2022, only workers who worked for the company during that period would be covered. Note that these letters do not name or individually identify workers.

How do workers apply for deferred action and work authorization?

Individuals who fall within the class of workers described in the labor agency letter can apply for deferred action and a work permit. Applications should go to USCIS, and the request for deferred action should be sent at the same time as the request for work authorization. USCIS has a list of materials that should go in the applications available on its website. Note that the request for deferred action has no fee or cost, but the request for work authorization requires payment of a \$410 processing fee, unless the applicant seeks a fee waiver.

Where do I file the application?

Applications should be sent to:
USCIS
Attn: Deferred Action
10 Application Way
Montclair, CA 91763-1350

Are the deferred action and work authorization renewable?

They may be, depending on how long the labor investigation takes. USCIS has not made any renewal process clear at this point. We will issue an updated FAQ if it does.

Is this program a path to permanent legal status?

No, deferred action is only a temporary permission to be in the United States.

Are there any risks to applying?

If you are not currently in removal proceedings or have a final order of removal against you, the act of applying for deferred action alerts DHS that you are in the country, which always carries a risk that they will decide to take an enforcement action against you, especially if they did not know that you were present already. These applications are confidential, but there is a possibility that a different presidential administration may choose to use the information in the applications to put workers into deportation proceedings after their status expires. Also, if you have any kind of criminal record, including arrests, we especially recommend speaking with an immigration law practitioner, such as an immigration lawyer, before requesting deferred action. DHS has said that people with criminal records are potentially eligible, but having a criminal record could increase the risk that DHS will deny your application and take enforcement action against you.

For more information on this new process, please refer to this longer [FAQ by NILC](#) and the [DHS guidance](#) itself.



Please note this information is intended as a resource for community members and does not constitute legal advice.

For questions about this resource, contact Ann Garcia at agarcia@nipnl.org or Jessie Hahn at DAforWorkers@nilc.org.