

Deferred Action for Workers Standing Up for Their Rights

On January 13, 2023, the U.S. Department of Homeland Security (DHS) announced that noncitizen workers now have an expedited way of securing protections from detention or deportation from DHS when participating in a labor investigation. Through this procedure workers who experience or witness abuses like having their right to organize and collectively bargain violated, having their wages stolen by their employer, made to work in treacherous job conditions can report them to government labor agencies and at the same time apply to DHS for temporary protection through deferred action.

That means that if a worker files a claim with a labor agency and is concerned about being retaliated against because of their immigration status, they can request additional immigration protections from DHS. This process will improve DHS's longstanding practice of using its discretionary authority to consider labor and employment agency-related requests for deferred action on a case-by-case basis. These improvements advance the Biden-Harris Administration's commitment to empowering workers and improving workplace conditions by enabling all workers, including noncitizens, to assert their legal rights.

What Workers Need to Know About Deferred Action

What is deferred action?

Deferred action is an official delay of removal or deportation proceedings against a qualified immigrant for a specified period of time. Deferred action has been offered to various groups of people based on a range of criteria, but this Q&A will specifically address new opportunities for workers to access deferred action.

What benefits come with deferred action?

- Work authorization, for a minimum of two years, possibly renewable.
- Recognized lawful presence in the country, which provides protection from deportation, for a minimum of two years, possibly renewable.
- Ability to apply for a Social Security number, which allows a state-issued identification and/or driver's license and correctly attributed tax payments.
- Eligibility for unemployment insurance.
- Limited permission to leave the country upon request based on specific need.

What benefits do NOT come with deferred action?

- Pathway to permanent legal status, citizenship or a green card.
- Access to most public benefits, including health care subsidies.
- The ability to sponsor or reunite with family members.
- The right to vote in political elections.



Deferred action provides undocumented individuals temporary relief from deportation and the opportunity to apply for work authorization. It is not amnesty, nor does it provide a pathway to permanent residence or citizenship. People who receive deferred action are prohibited from accessing most public benefits, including health care subsidies under the Affordable Care Act. In addition, people who receive deferred action cannot petition to bring family members—even spouses, parents or children—from abroad to join them in the United States.

How does deferred action help workers?

Deferred action protects workers from being exploited by unscrupulous employers. When immigrant workers have employment authorization and receive temporary protection from deportation through deferred action, they are better able to assert their rights in the workplace and in their communities without the fear of being reported to ICE in retaliation. This improves the ability of workers to take action together to enforce core labor standards, bargain for improved wages and conditions, and address serious and all too common workplace violations such as wage theft and sexual harassment.

How do I become eligible?

Workers become eligible for these new protections by organizing. When you have the courage to exercise your protected labor rights and take action to make your workplace more safe and fair, you help enforce our labor laws. As a result, labor enforcement agencies have committed to seek protections on your behalf.

What kinds of criminal offenses or other conduct will disqualify people?

This will differ from individual to individual, depending on the details of the case and the state in which a crime is committed. If you have a criminal conviction, we encourage you to consult with an immigration attorney before applying. The RWDSU may be able to help by connecting you to a legal services organization or immigration attorney. The Department of Justice also maintains a list of pro bono legal service providers here: [Justice.gov/eoir/list-pro-bono-legal-serviceproviders](https://www.justice.gov/eoir/list-pro-bono-legal-serviceproviders).

What do I need to tell my employer?

Nothing. There is no need to discuss with your employer your intention to apply for deferred action. Once you are granted temporary protections and a work permit, there may be some benefits to updating your employee records, but you should proceed cautiously. We recommend that you consult with your union rep and/or an attorney before sharing any new information with your employer.

Will I be able to renew my deferred action?

The Biden administration has demonstrated a clear commitment to protecting workers, and it is our hope that deferred action will be renewable after the initial two-year period. Letters from labor agencies also have asserted the importance of protections being renewable. We cannot, however, make any concrete promises for the future. A new administration may change the policy and refuse requests for protections and renewals.

Does applying for deferred action prevent me from pursuing a U Visa?

No. This new deferred action process does not prevent workers from applying for a U Visa. In fact, because it is easier and faster, applying for deferred action could be seen as a first step to take while exploring more permanent forms of relief. A successful deferred action application could go through from start to finish in a matter of months, leading to an almost immediate grant of employment authorization, in contrast to the long delays in the U Visa process. Any workers who have suffered severe abuses, especially involving violence, threats or attempts to prevent them from participating in a government investigation, may be eligible for a U Visa, and should definitely consider applying. Although it is slow and harder to qualify, the U Visa process provides much stronger protections to workers. Once granted, a U Visa can lead to permanent residency and, eventually, a pathway to citizenship. Many workers facing more typical wage theft, workplace safety or other labor law violations, however, will not qualify because they do not fit the specific crimes covered by the U Visa process. Therefore, the deferred action process is meant to cover a much broader range of workers than the U Visa does.

Is it safe to share my personal information with DHS?

DHS has committed to working with the federal labor agencies to protect workers from immigration-related retaliation. We fully expect that, under this administration, DHS will stand by its word and defer any enforcement activities against workers seeking deferred action under this program. Even when there is a change in administration, it is still unlikely that the minimal biographical information provided to DHS would serve as a basis for immigration enforcement. If DHS later does seek immigration enforcement against a worker who no longer has deferred action, however, it will be able to access the information provided. For this reason, it is very important that each worker be advised by an immigration attorney of the risks as well as the benefits of filing an application based on their particular situation.

Hasn't deferred action been blocked in the courts?

Deferred Action for Childhood Arrivals ("DACA") has been blocked by a federal district court in Texas. The injunction against DACA does not, however, affect other forms of deferred action issued on a case-by-case basis. Protecting victims and witnesses to violations of federal law is one of the most well-established bases for granting deferred action, because it promotes the U.S. government's enforcement of its laws.

Can I still apply if I have an ongoing immigration process?

For any workers currently in immigration court proceedings, a deferred action request could be highly beneficial. A statement of interest from a labor agency could be used to advocate for relief directly with ICE prosecutors. In this situation, as always, please consult with your attorney to assess the best path forward.