

Labor and Employment Law Alert
September 2017

**PROGRAM ON DEFERRED ACTION FOR CHILDHOOD
ARRIVALS (“DACA”) RESCINDED**

*For a discussion of these and other legal issues, please visit our website at www.mhtl.com.
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On September 5, 2017, the Department of Homeland Security issued a memorandum announcing the rescission of the June 15, 2012 Memorandum entitled *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children*, which had established the program known as Deferred Action for Childhood Arrivals, commonly referred to as “DACA.” This may have a significant impact on employers who rely on individuals in their workforce with lawful immigration status through DACA.

Under DACA, an individual who entered the United States before the age of 16 and met the eligibility criteria could receive prosecutorial discretion (*i.e.*, not be subject to deportation) for a period of two years. An individual could apply for the renewal of his/her DACA status, and eligible individuals could also obtain work authorization and advance parole (*i.e.*, travel authorization).

Effective immediately, the Department of Homeland Security will:

- Not accept any new initial DACA requests;
- Adjudicate DACA and associated applications for employment authorization that have been accepted before September 5, 2017;
- Adjudicate pending DACA renewal applications and associated applications for employment authorization that have been accepted as of September 5, 2017;
- Adjudicate DACA renewal applications and associated applications for employment authorization that are accepted as of October 5, 2017 for individuals whose benefits will expire between September 5, 2017 – March 5, 2018;
- Not revoke approved DACA applications or employment authorizations for the remaining duration of their validity periods;
- Not approve any new applications for advance parole; and
- Administratively close all pending applications for advance parole filed under DACA and refund the associated fees.

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The Trump Administration is calling upon Congress to work toward developing legislation to address the issue of how to allow the intended DACA recipients to obtain lawful immigration status in the United States, outside the ambit of the June 15, 2012 Executive Order. The rescission of DACA without an alternative means to allow these individuals to continue to retain lawful employment in the United States may have serious implications for employers and individuals.

Notwithstanding this announcement on the rescission of DACA, or an individual's status as a DACA beneficiary, employment authorization documents will remain valid for their stated dates; and employers should continue treating them the same as any other employment authorization document for employment authorization purposes.

Moreover, public school systems in Massachusetts are subject to the rules of the Department of Elementary & Secondary Education and to precedent from the Supreme Court of the United States, that predate DACA, with respect to the education of undocumented minors who meet residency requirements. This announcement on the rescission of DACA has not changed that.

We will be monitoring the developments on these issues closely and will provide an updated Client Alert when additional information becomes available.

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If you have any questions about this issue, please contact Michelle De Oliveira or the attorney responsible for your account, or call (617) 479-5000.

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