



## Deferred Action For Workers Who Are Involved In Labor Investigations

*Every situation is unique. This is general information intended for educational purposes. It does not constitute legal advice.*

The Department of Homeland Security (“DHS”) announced a new process that permits workers who are involved in labor investigations to petition for deferred action and ultimately a temporary work authorization. This process is very new and we are still learning the details.

Deferred action is a discretionary decision made by the federal government that permits certain persons who are undocumented to stay in the country and work legally for a designated period. Deferred action does not confer legal status to individuals rather it reflects DHS’ intention to avoid deportation of those persons for a period of time. This is a recently announced policy that offers a temporary but important protection for vulnerable workers.

### **Who can seek deferred action and work authorization through this process?**

Workers who are a part of a workplace investigation by a labor agency, like a victim of labor violations or a person who may act as a witness to a labor investigation. This deferred action process offers a person work authorization for two years and is renewable while an investigation is ongoing. Once the labor investigation is closed we are unsure that the work permit will be renewed.

For now, DHS states that if the deferred action is not renewed they do not plan to initiate deportation proceedings against someone unless someone is seen as a threat to national security. However, there is always a risk when you are an immigrant that you may be on the radar of the U.S. Immigration and Customs Enforcement (“ICE”). It is important that each person makes a decision with their attorney or representative to see if this process is helpful to them especially, if you have a history of interactions with the criminal system or (an) order(s) of deportation.

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**What is the process for seeking deferred action?**

First, an employment attorney will seek a letter of interest from the labor agency stating the agency is investigating labor violations by your employer. The letter by the labor agency should cover the worksite generally and not necessarily an individual. Once a worker receives a letter of interest, they can work with the assistance of their immigration attorney to seek deferred action and a temporary work authorization from the United States Citizenship and Immigration Services ("USCIS").

**What happens if there is a lawsuit against DHS regarding this new process?**

For now, there is no lawsuit against DHS. It is possible that anti-immigrant groups will sue DHS challenging the legality of this new process, as these groups did when they sued against the DACA process. It is possible that should a lawsuit ensue, the process would be suspended.

**Is Make the Road New York assisting persons to obtain deferred action through this process?**

At the moment, we are doing a case-by-case evaluation to see whether we can advocate with labor agencies to provide a letter of interest.

It will take time for each labor agency to organize their resources so that they can develop their own process. The United States Department of Labor ("US DOL") published the rules for requesting a letter of interest from the agency. And, the US DOL has issued letters of interest to workers seeking deferred action. However, not all labor agencies are aware of the process nor have they issued letters of interest. Often, MRNY makes complaints to state and local labor agencies like the New York State Department of Labor ("NYS DOL"). We are awaiting the publication of the state and local agency rules.

**What should I do if I have a pending claim before an labor agency or if I want to submit a complaint to a labor agency?**

It is important to have an employment attorney and an immigration attorney evaluate your options and risks.

We suggest that you be careful when seeking help from private entities regarding this programs for the following reasons: 1) we always have to be aware of the high prevalence of "notario fraud" against the immigrant community; and 2) this program is new to all attorneys and representatives and we still need to review the information and figure out how to reduce the probability of risk.