



EMPLOYMENT RIGHTS WITH DACA/TPS

Your Employment Rights with DACA and TPS

As a DACA/TPS recipient, you can apply for and receive an EAD (Employment Authorization Document) which allows you to work legally so long as your EAD has not expired.



When you are hired and start a job, your employer is required to verify your identity and your right to work. Your employer will use a Form I-9 to do so. **Your EAD is the only work-authorization document that you need to complete the Form I-9.**

Your employer cannot ask you for more or different work authorization documents than what is already permitted by the Form I-9. Likewise, an employer cannot reject work authorization documents because of your citizenship status or national origin. They also may not ask what your immigration status is.

The FAQs below will help you understand your employment rights with DACA/TPS and an EAD.

When I am applying or interviewing for or starting a new job, do I need to tell the employer that I have DACA/TPS status?

No. The only thing the prospective employer needs to know is that you have a valid employment authorization card (work permit). The employer does not need to know and should not inquire about how or why you received it.

What is the Form I-9 and why does my employer use it?

The Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify that all newly hired employees – citizens and non-citizens – present documentation verifying the employee's identity and right to work in the United States. Under this law, an employer must require each new employee to complete what is known as a Form I-9. If asked, an employer must show the completed forms to officials from the U.S. Department of Homeland Security.

What documents do I need to satisfy the I-9 requirements?

You are required to show documentation that proves your identity and authorization to work. Your EAD will satisfy I-9 requirements because it establishes both your identity and employment authorization. It is unlawful for an employer to request more or different documents than are required by the Form I-9 to verify employment eligibility.

Can an employer reject me because my EAD expires in the future?

No, this would be a form of employment discrimination.

Do I need a driver's license and/or social security number to work?

No, unless driving is an essential part of the job. Your work permit is sufficient to prove your identity and employment authorization in the U.S. However, obtaining a driver's license (or state ID) and social security number can generally be helpful as additional identification.

What is E-Verify and how does it affect me?

Some employers use E-Verify at the time of hire to confirm that their workers have permission to work. This internet-based system uses I-9 information to make this determination. An employer's use of E-Verify could be considered discriminatory if it is only used to check some (but not all) employees. Learn more about E-Verify on the USCIS website.

Can my employer ask to see my work permit again?

Once you are hired and have completed the I-9 or E-Verify employment eligibility verification process, your employer should not ask to see your work permit or any other identity or employment eligibility verification document until the time your EAD expires. If your EAD is about to expire or has expired, your employer may re-verify your employment eligibility – and ask to see your valid EAD again.

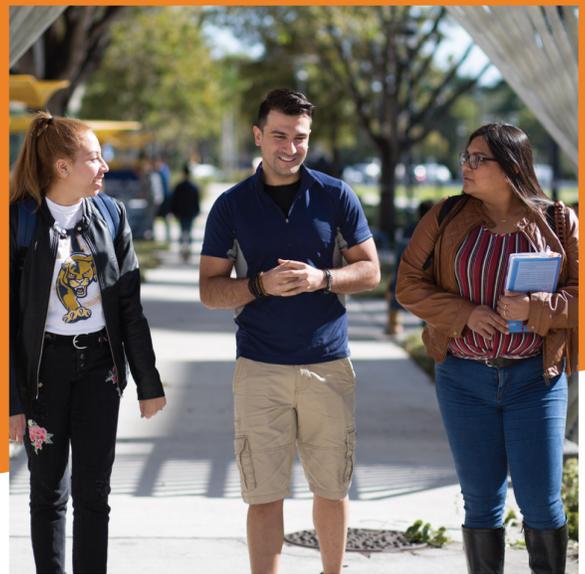
Are there any limits on my employer's ability to re-verify my work authorization?

Yes. Under employment and civil rights laws, it is unlawful discrimination for an employer to selectively re-verify the employment eligibility of certain employees on the basis of their country of origin, citizenship, or immigration status. If your employer singles you or a certain group of employees out for re-verification without having some legitimate reason – such as the expiration of your document – the employer may be engaging in unlawful discrimination.



Did you know...

91% of DACA recipients – or roughly 700,000 individuals – are currently working and 18 of the top 25 Fortune 500 companies have DREAMers in their workforces.



What happens if my work permit expires?

Once your work permit expires, your employer is required by law to ask to see your new work permit and you must provide a new work-authorization document. Your employer may terminate your employment if you are unable to provide a new authorization.

What happens if my work permit expires and my employer does not ask me for a new work permit?

You do not have a duty to tell your employer that your work authorization has expired. If your employer does not ask you to provide a new work authorization and you continue to work, you will be working without authorization.

You should consult a qualified immigration attorney to assess any risks specific to your personal situation.

What happens to my employer if it fails to request a new work permit after it expires and continues to employ me?

Your employer may be audited by the Worksite Enforcement Unit of the Department of Homeland Security (DHS), which is responsible for enforcing the law prohibiting unauthorized employment. If your employer is found to have knowingly continued to employ you after your authorization to work has ended, your employer may be subject to liability and penalties under federal immigration law.

Can my employer fire me?

In general, unless you are covered by a union or other employment contract, employment in the U.S. is considered "at will" and an employer can fire an employee at any time as long as the employer is not illegally discriminating or retaliating against you. Thus, even if you do have a valid work permit, your employer may still legally choose to fire you, but not on the basis of your immigration status, race, gender, national origin, or other prohibited basis.

Can my employer call ICE to report me?

An employer can call ICE to report your immigration status, but ICE is not required to respond to the call. Context can matter. If the employer made the report for discriminatory reasons or because you were engaged in protected activity (like filing a legal claim against the employer, taking protected leave, organizing coworkers to improve working conditions, or some other exercise of your workplace rights), then the report may be unlawful. In limited cases, the employer's retaliatory reporting may be grounds for a U visa.

Can I work as an independent contractor?

All immigrants, regardless of immigration status, are able to earn a living as independent contractors or start a business using an ITIN (Individual Taxpayer Identification Number) or SSN (Social Security Number). Regardless of the possible termination of DACA and TPS, DACA and TPS beneficiaries may continue to use their SSN to work as an independent contractor or start a business; both options do not require work authorization. Federal law prohibits an individual or entity from knowingly engaging an unauthorized individual to provide services as a contractor.

What can I do if I believe that I'm being discriminated against in hiring or in the workplace?

Keep track of all communication by the employer and make sure you get everything on paper, if possible. Be sure to ask calmly why you are not being hired or your employment is being terminated.

RESOURCES

MALDEF: For legal questions or clarifications or if you believe you have been denied employment because you are a DACA/TPS recipient, please email DACAjobrights@maldef.org.

Immigrants Rising: For information about how to work for yourself, or start a business, visit <https://immigrantsrising.org/start-here/making-money/> and contact Iliana Perez at iliana@immigrantsrising.org

TheDream.US: To learn about employment or internship opportunities for TheDream.US Scholars, email tania.wilcox@TheDreamUS