

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

FAQs on EMPLOYMENT AUTHORIZATION

With the rescission of DACA on September 5, 2017 and the failure to pass any legislative solution since then to provide DACA recipients and other undocumented students with a pathway to residency or citizenship in the United States, it has been important for colleges and universities to reaffirm their full commitment to enroll, educate, and support Dreamer students.

The purpose of these FAQs is to address some questions that have arisen regarding employment authorization and DACA. For more information and links to an array of resources on work authorization issues, see the *Informed Immigrant* [website](#), and its section on “EAD and Employment Rights.”

Introduction

Employment authorization documents (EADs or work permits) are granted under US immigration law for a variety of immigration programs, including applicants for permanent resident status, international students in F-1 status and Deferred Action for Childhood Arrivals (DACA). Holding an EAD does not necessarily mean a person is a DACA beneficiary.

The I-9 employment eligibility verification process protects DACA recipients from discrimination. Employers are not allowed to request different or additional documentation from individuals who look or sound like they were born abroad. Employers are not allowed to reverify the I-9 unless it expires or a routine audit shows there was a mistake. DACA EADs do not have language that the holder is a DACA beneficiary, and employers are not allowed to ask how an employee or new hire obtained an EAD. International students in F-1 status have EADs with a restriction for optional practical training or curricular practical training only, and the I-9 instructions explain that employers must also request the student's I-20 and I-94 admission record.

These rules can be confusing for employers, and yet employers face fines and penalties for I-9 violations including both lack of compliance and being overly zealous in the I-9 process. Employers going beyond what the I-9 rules allow can be charged with unlawful employment practices, employment discrimination and document abuse in the I-9 process.

What are the obligations of employers with regard to employees' work authorization?

Employers are required to track I-9 expiration dates and reverify I-9s when they expire. Employers may remind employees that their I-9 will expire soon but they are not allowed to take any adverse employment action until the I-9 expires and then only if the employee can't present other I-9 documentation within a reasonable period of time. The employee may have become an approved permanent resident with a green card already and the employer has no way to know that until the I-9 is reverified.

Individual supervisors on campus should not ask individual employees about their I-9 expiration date. The Human Resources office can provide reminders to all student employees and other employees

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holding EADs that when their I-9 authorization expires, they need to present updated documentation. The HR office can also provide information on options if the employee cannot present updated documentation. See below.

Employers should ask all job applicants at the first opportunity in the recruitment process whether immigration sponsorship will be needed at time of hire or in the future. Employers aren't required to extend offers of employment to candidates who will need immigration sponsorship now or in the future. The need for immigration sponsorship applies to those individuals with limited duration visas; it does not apply to DACA recipients, as DACA is currently configured.

But once an offer of employment is made, employers are not allowed to turn away a new hire who presents an EAD for I-9 purposes even if it expires soon and can't be renewed.

If an employer knows or has reason to know that an employee doesn't have lawful employment authorization, the employer is required by law to terminate the employee. Employers can be charged with serious immigration and employment law violations for basing adverse employment actions on rumor or innuendo.

Always give an employee a reasonable opportunity to present document of lawful employment authorization before terminating employment on that basis. Terminating an employee who has lawful employment authorization can violate immigration law and civil rights law and subject the employer to substantial fines and penalties.

If a DACA recipient experiences a lapse in work authorization, what options can the college or university as the employer consider?

If the employer reasonably believes the employee will present updated I-9 documentation shortly, the employee may be placed on unpaid leave until the updated documentation is presented.

What are the rights of students or employees with regard to their work authorization?

Employees do not have an affirmative duty to inform their employers that they have DACA, or that their work authorization has expired or will soon expire. However, DACA recipients should be aware that working without work authorization may adversely impact them during any future immigration status adjustments.

The [Informed Immigrant](#) website features an excellent set of resources for DACA recipients regarding their rights related to employment. FAQs on the [site](#) include:

- *Should I tell my employer if my DACA and work authorization expires?*
- *Can my employer ask to see my work permit again?*
- *Are there any limits on my employer's ability to reverify my work authorization?*
- *Can my employer fire me?*
- *Can my employer call ICE about me?*
- *What happens if my work permit expires and my employer fail to ask me for a new work permit?*
- *If my work permit expires, what happens to my employer if they fail to request a new work permit and continue to employ me?*
- *Can I work as an independent contractor?*