

**Deferred Immigration Action for Childhood Arrivals:  
Implications for Your Clients, Wisconsin and Beyond**

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**Attorney Nilesh Patel**  
Mahadev Law Group, LLC

**Attorney Jessica Ozalp**  
Wisconsin Legislative Council

**I. BROADER CONTEXT AND LEGAL FRAMEWORK OF DACA**

A. Introduction

Contextualizing DACA

Clarifying misconceptions

<b>What DACA is:</b>	<b>What DACA isn't:</b>	<b>What grantees can get:</b>	<b>What grantees don't get:</b>
A promise not to deport the individual grantee for two years	A promise of any benefit or status for any family member of a grantee	A driver's license and a valid social security card	A green card
A policy of prioritized enforcement based on a defined criteria checklist	A path to citizenship or permanent residence	Legal authorization to work (EAD)	A visa of any type
A process <u>resembling</u> a petition for immigration benefits; individuals may come forward to identify themselves as eligible for deferral. Approval means the government agrees	A petition for immigration benefits (such as a family-based or employment-based application to get a visa or a green card)	A two year freeze on the accrual of "unlawful presence," which in defined quantities can create 3-year or 10-year bar to admissibility	A legal immigration status of any type
A policy of prosecutorial discretion, with an affirmative application process added	The DREAM Act or any legislative act (no statutes or regulations have changed)	Assurance that disclosed information will not be shared with ICE, barring suspicion of crime/fraud	Amnesty
A memorandum by Secretary of Homeland Security Janet Napolitano (announced by President)	An executive order	Resident tuition at state universities in certain states	Resident tuition at state universities in most states

B. Who is eligible?

Individuals meeting all of these criteria may apply for DACA:

- Were under the age of 31 as of June 15, 2012;
- Came to the United States before reaching their 16th birthday;
- Have continuously resided in the United States since June 15, 2007, up to the present time (as proven through documentary evidence);
- Were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
- Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

***Estimated qualifying youth:***

1.7 million nationally

5,860 in the state of Wisconsin

***Applications so far:***

368,000 (about 4,500/day)

*Approved:* 103,000

USCIS began accepting applications on August 15, 2012. A nonprofit event that day on Navy Pier in Chicago drew 13,000 hopeful applicants.

C. Applicant analysis of risks vs. potential benefits

Key issues include:

- Weighing benefits of applying and getting deferral vs. risks such as triggering deportation proceedings.
- Impact on current employment.

- Obtaining and analyzing all records which will be inspected by immigration officials (state and federal background checks, municipal violations, records of any juvenile offenses, border patrol encounters).
- Deciding whether previously used social security numbers must be disclosed.
- Concern for negatively affecting others that are related to the individual or have employed him/her.
- Obtaining sufficient documentation of continuous residence and all eligibility criteria.

## II. DACA'S IMPACT ON EMPLOYEES AND EMPLOYERS

### A. DACA grantees are eligible for employment authorization.

Some of the major questions this triggers include:

- Do employers have to worry about being implicated for hiring unauthorized individuals in the past?
- Did an employer violate the law by hiring an unauthorized individual in the past?
- How do grantees explain past immigration status and work history? Do they have to?
- What if an application asks for prior work history? Should the applicant disclose that even if it was under a different name?
- What if an applicant voluntarily discloses the newly granted DACA status during the recruitment process? May the employer refuse to hire the individual because there is only a two year period of work authorization?
- What if a current employee comes forward and wants to “update” prior payroll information? Does the employer have a duty to investigate the reasons? Should it investigate the reasons for the changes? Can the employer terminate an employee for using a false identity and false documentation?

### B. Issues surrounding the legal rights and obligations of employers:

- USCIS has stated it will not report past employment information for civil enforcement purposes, unless there is evidence of egregious criminal violations or widespread abuses.

- DACA applicants may submit past payroll information to prove continuous presence in the US and may request information from their employers. Employers should review disclosure obligations under state or federal law. See if disclosure is required by Wis. Stat. sec. 103.13, or for public employers, by open records laws. Employers should also review their employment policies to determine if employees are entitled to records. Selective withholding of records based on race or national origin status could lead to discrimination claims.
- Potential discrimination claims: citizenship or national origin discrimination under Title VII of the Civil Rights Act of 1964 (federal) and the Wisconsin Fair Employment Act.
- The Immigration Reform and Control Act of 1986 (IRCA) prohibits discrimination based on immigration status or national origin; it also prohibits document abuse (occurs when specific documents are demanded to verify employment or genuine documents are rejected to intentionally discriminate). Applies to hiring, referrals, retaliation, or termination.
- Immigration Reform and Control Act of 1986 requires employment verification (Form I-9) and provides a safe harbor defense if employers unwittingly hired an unauthorized individual after following approved verification procedures.
- Employment at will doctrine could justify terminating an employee who falsified I-9 documents or misrepresented his/her identity. Employers could consider this a termination for misconduct.