

ALLIANCE FOR IMMIGRANT SURVIVORS

Policy Update: New DHS Guidance Regarding Immigrant Workers and Protection from Deportation

On January 13, 2023, the Department of Homeland Security (DHS) released [new guidance](#) about a new process for immigrant workers that will greatly benefit immigrant workers, including survivors who experience harm or discrimination in the workplace. In this new process, immigrant workers can apply for **temporary protection** from deportation (and for work authorization) if they are victims of, or witnesses to, labor exploitation, which can include sexual assault and sexual harassment or human trafficking, in the workplace.

This action alert explains both the new DHS guidance and the processes outlined by labor agencies for workers to request their support in seeking prosecutorial discretion from DHS. This relief is **discretionary**, meaning that it could be denied even if an immigrant worker is otherwise eligible for the protection. As eligible immigrant workers may be vulnerable to immigration enforcement because of prior orders of removal, criminal legal system contacts, and other immigration violations, *all* are encouraged to consult with an immigration attorney before submitting any applications for relief covered by this guidance.

Overview

The new guidance clarifies that victim migrant and immigrant workers may receive discretionary relief from deportation (known as “prosecutorial discretion” or “PD”) if their complaints are under investigation by a federal or state labor agency and the labor agency supports their request.

The DHS guidance centers mainly on a form of prosecutorial discretion called “Deferred Action.” It will last for a period of two years at a time while the underlying labor dispute is ongoing, and workers should be advised that this process does not provide a direct path to long-term status. It may, however, allow workers who are also pursuing U and T immigration status to have short-term protection from immigration enforcement (i.e., deportation) and apply for work authorization while those applications are pending, or while they prepare to file for those and other forms of relief. The U.S. Citizenship and Immigration Services (USCIS) will process applications for Deferred Action based on this new guidance and has established a central mailbox to receive them.

Applicants for Deferred Action can simultaneously apply for work authorization, with a minimal showing of economic necessity for employment.

The DHS guidance notes that some workers may be able to use this process to apply for another form of prosecutorial discretion called “Parole in Place.” Parole in Place also allows applicants to apply for work authorization. Parole in Place may be helpful for those who entered the U.S. without inspection, and who may thereafter become eligible for adjustment of status to permanent residence on an independent basis other than these short-term protections. USCIS has not yet announced a process for seeking Parole in Place in connection with this new guidance.

Individuals in deportation proceedings or with prior orders of removal may access these temporary protections. Still, they should be aware that USCIS will share their requests with Immigration and Customs Enforcement (ICE) so that a joint decision can be made on whether to grant the request. *All* immigrant workers should contact an immigration attorney to determine the risks and benefits of applying for protection under this guidance.

Eligibility

Immigrant workers are eligible to apply for prosecutorial discretion under the new guidance if they are included in a labor agency investigation and the labor agency has requested support for deferred action or parole from USCIS on their behalf. As with the U and T visa protections within the Violence Against Women Act (VAWA), the inclusivity of this new guidance is meant to lessen the fear of reporting labor violations because of threats of retaliation and deportation.

Again, as this is a *discretionary* process, it is important for workers to consult with an immigration attorney before submitting an application for these protections.

Examples of labor violations: stolen wages, hazardous and unsafe working conditions, discrimination based on gender or nationality, sexual assault, sexual harassment, human trafficking, etc.

Two-step process for a worker to receive this benefit:

1. Labor Agency Process

- a. The worker becomes involved in a labor dispute that is reported to a labor agency.
- b. The worker or their advocate submits a request to the labor agency for a letter supporting prosecutorial discretion (known as a **“Statement of Interest”**).
 - All federal, state, and local labor and employment law enforcement agencies may issue statements of interest. These include the federal U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), and Equal Employment

Opportunity Commission (EEOC), as well as their counterpart state and local labor enforcement agencies, state Attorneys General, and municipal-level labor and enforcement agencies. State and local agencies may issue statements of interest even if they are investigating a complaint arising under state and local laws that are more protective than federal laws.

- c. If the labor agency agrees to support the request for prosecutorial discretion, they will send a Statement of Interest to USCIS with a copy to the requester.

2. DHS Process

- a. The worker or her advocate may submit requests for deferred action and work authorization to USCIS at the same time. The [DHS FAQ](#) provides a list of forms/documents to submit.
 - Requests for deferred action or any other type of relief, together with applications for work authorization, should be submitted to the following address:

USCIS
Attn: Deferred Action
10 Application Way
Montclair, CA 91763-1350

- b. If the application is accepted for processing, the worker should expect to receive a biometrics appointment within a few weeks of filing. Early reports suggest that these applications will be processed on an expedited basis, with approvals or Requests for Evidence (RFEs) arriving within a few months or even weeks. As more applications are submitted, however, those processing times could change.
- c. If DHS approves the request, the worker will receive a letter granting deferred action for a two-year period, along with a work authorization card.

Conclusion

These improvements advance the Biden-Harris Administration's commitment to empowering workers who may be survivors of gender-based violence and improving workplace conditions by enabling all workers, including noncitizens, to assert their legal rights. **The National Immigrant Law Center (NILC) has created a [resource list](#)**, a living document that they will update to include relevant agency documents, know-your-rights materials, and other useful resources. To learn more about the forms needed to submit, and other questions you may have about this process, please see this [helpful NILC resource](#). Stay tuned for further updates as this new process evolves.