FEDERAL Employment Law Insider

An update on new federal law and regulation affecting your workplace

David S. Fortney and H. Juanita (Nita) Beecher, Editors
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EMPLOYEE BENEFITS

Tax reform bill includes some Obamacare-related items

by Eric Schillinger
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Complete repeal and replacement of the Affordable Care Act (ACA) fell apart in Congress months ago. But the Tax Cuts and Jobs Act (TCJA), a tax reform bill that recently cleared Congress and was signed by the president on December 22, 2017, does include some provisions related to the ACA, health care, and other employer-sponsored health, welfare, and fringe benefits, albeit not the "big ticket" items sought by employers or related stakeholders, such as repeal of the employer mandate penalties.

Elimination of 'individual mandate' penalties

Starting in 2019, the TCJA eliminates the penalties associated with the ACA's individual mandate, which required most Americans (e.g., those without an exemption) to obtain certain health insurance coverage. This change is consistent with past ACA-replacement proposals, except it isn't retroactive, as would have been the case under many of those proposals. In other words, the individual mandate penalties remain in effect through 2018.

As we've stated in previous articles, the elimination of the individual mandate's penalties is effectively equivalent to repealing the mandate outright from a practical standpoint. But it's an alternative approach made necessary by the "budget reconciliation" rules that apply to the TCJA.

The elimination of the penalties is anticipated to have a relatively minor impact on employer-sponsored health insurance (ESI), according to the Congressional Budget Office (CBO). For example, we may see a modest reduction in ESI enrollment by active employees (roughly three million over the next decade). However, the change could have a bigger impact on the individual market.

Theoretically, eliminating the individual mandate penalties will increase premiums via the reduced enrollment of younger and healthier individuals, which could indirectly affect certain retiree ESI plans known as health reimbursement arrangements (HRAs) as well as employer payment plans that pay for a portion of retirees' individual market expenses. As a result, retirees with those plans could face increased costs on the individual market, leading to a quicker spend-down of those plans.

Other revisions, both temporary and permanent

Temporary elimination of exclusion/deduction for qualified moving expenses. Effective for an eight-year period starting in 2018, the TCJA eliminates for most employees the tax exclusion or deduction for

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qualified moving expense reimbursements. In general, the deduction and exclusion would remain available only for certain individuals in the military whose relocation complies with military orders. The lack of a tax exclusion will also result in employers being unable to exclude their share of the related employment taxes (e.g., Social Security).

Elimination of employer deduction for certain qualified transportation plans. The TCJA also eliminates, in most cases, the deduction employers can take for certain qualified transportation fringe benefits they provide. The tax exclusion available to employees for such benefits would generally remain in effect. Under one exception, the TCJA suspends the tax exclusion for "qualified bicycle commuting" reimbursements for tax years beginning after 2017 and before 2026. Nonetheless, the elimination of the employer deduction arguably will reduce the incentive for employers to offer transportation benefits.

Certain other fringe benefits. The TCJA also revises the rules related to certain other fringe benefits. For example, the amount employers can deduct for employee meals is reduced if the expense is otherwise excludable as a *de minimis,* or minimal, fringe benefit.

Bottom line

Although it's a far cry from the major changes to the ACA proposed throughout 2017, the TCJA includes several provisions that will have an impact on employers and employee benefits, and many of them could ultimately reduce employer savings. Keep an eye out in the coming months for guidance from federal agencies, including the IRS, that will provide additional information on the changes enacted by the TCJA.

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ADMINISTRATIVE AGENCIES

Review of the Trump administration's first year overseeing employment law

by David Fortney and H. Juanita M. Beecher
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The past year has included many expected moves by the Trump administration, such as the reversal of some of the National Labor Relations Board's (NLRB) controversial decisions under the Obama administration, as well as several unexpected developments, such as the Office of Federal Contract Compliance Program's (OFCCP) continued aggressiveness in audits and litigation.

Significant, controversial, and surprising moves

The most important actions in 2017 by the Trump administration with regard to labor and employment law and enforcement included:

- The suspension of Component 2 of the EEO-1 report on August 29;
- The U.S. Department of Justice's (DOJ) memorandum reversing its position under the Obama administration that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation;
- The NLRB's reversal of four major decisions days before acting chair Philip Miscimarra's term ended (the Board's decisions are discussed in more detail in "Trump administration oversees sweeping changes at NLRB" on pg. 5); and
- The rescission of the Fair Pay and Safe Workplaces Executive Order (known as the blacklisting Executive Order) through the Congressional Review Act.

The most controversial proposal by the Trump administration—the merger of the OFCCP into the Equal Employment Opportunity Commission (EEOC) with no increase in the EEOC's budget for fiscal year (FY) 2018—was rejected by the Republican-controlled Congress after both contractors and civil rights activists strenuously objected.

The most surprising development was the administration's inability to get its people into key positions

at the U.S. Department of Labor (DOL) and the EEOC. Until recently, Secretary Alexander Acosta was the only senior official at the DOL. David Zatezalo joined Acosta as head of the Mine Safety and Health Administration (MSHA) on November 15. Just before the Senate recessed for the holidays, lawmakers confirmed Kate O'Scannlain as solicitor of labor, Katherine McGuire as assistant secretary for congressional and intergovernmental affairs, and Preston Rutledge as head of the Employee Benefits Security Administration (EBSA).

President Donald Trump will have to renominate Cheryl Stanton, his choice for administrator of the Wage and Hour Division (WHD), and Scott Mugno, his pick for administrator of the Occupational Safety and Health Administration (OSHA), when Congress reconvenes this month. Janet Dhillon (Trump's pick for EEOC chair) and Daniel Gade are also awaiting Senate confirmation to the EEOC. However, the Democrats agreed to carry them over to the next session after the White House renominated Chai Feldblum for a second term on the commission.

OFCCP very aggressive in 2017

The OFCCP finally has a new director, Ondray T. Harris, who began work on December 10. Tom Dowd had been the acting director of the agency since Pat Shiu stepped down on November 6, 2016. Despite lacking new political leadership, the OFCCP recovered a record $23.1 million in FY 2017 after it closed about 1,123 audits, the lowest number it has ever closed during a fiscal year.

The OFCCP was very aggressive in pursuing audits and litigation in 2017, prompting many contractors to dub last year the "9th year of the Obama administration." In the waning days of President Obama's second term, the agency filed litigation against JPMorgan Chase, Google, and Oracle. Meanwhile, the Pacific Region, under the leadership of regional director Janet Wipper, a former plaintiffs' attorney, undertook several in-depth audits, especially of tech industry contractors. Based on its settlements with Qualcomm and Palantir, the region recovered a majority of the financial penalties collected by the OFCCP in FY 2017. The Pacific Region has also been the most aggressive region with regard to litigation, especially against Google and Oracle.

The focus of the OFCCP's in-depth audits has primarily been compensation, hiring, and steering. Other regions have begun to use the Pacific Region's model of rejecting market data and employer-controlled factors such as employee time in pay grade as being tainted with discrimination.

Now that the OFCCP has a Trump-appointed director and the agency's budget is expected to be substantially cut, contractors should see some moderation in its approach to enforcement. The OFCCP will continue to focus on compensation and hiring, however. The administration's budget proposal for FY 2018 indicated a continued focus on both tech and finance, and the agency plans "skilled regional centers" in San Francisco and New York City.

EEOC is prescient on #MeToo

When President Trump appointed Victoria Lipnic, the only Republican on the EEOC, as acting chair, many in the EEO community hoped she would eventually be named chair. That didn't come to pass, but Lipnic has already left a substantial legacy at the agency during her time in charge. At her urging, the Office of Management and Budget (OMB) moved to suspend Component 2 of the EEO-1 report prior to Labor Day, as she had promised at the 2017 Industry Liaison Group National Conference held in August in San Antonio. Under her leadership, the EEOC has reduced its backlog of cases by 16 percent and filed twice as many lawsuits as it did in FY 2016.

It now appears that Lipnic's most lasting legacy will be her Select Task Force on the Study of Harassment in the Workplace, which she began chairing in January 2015 with commissioner Chai Feldblum. The report and recommendations issued by the task force in June 2016 provide helpful insights and advice for employers, especially on the type of sexual harassment training that can be successful. (See "4 steps for employers to minimize #MeToo liabilities" on pg. 1 of our December 2017 issue for an overview of the task force's recommendations.) The report also led the EEOC to update its sexual harassment guidance for the first time in more than 20 years, just in time for the tsunami of reporting that #MeToo has unleashed. The most important finding of the task force was how inadequate current sexual harassment training is in deterring harassment in the workplace.

Although no one has been nominated as general counsel yet, the EEOC should have a full complement of commissioners by early 2018 once Dhillon and Gade are confirmed, with three Republicans (Dhillon, Gade, and Lipnic) and two Democrats (Feldblum and Charlotte Burrows). The agency recently issued its draft strategic plan for FY 2018-22, which is discussed in detail in "Inside the EEOC" on pg. 7. And in recognition of the 50th anniversary of the Age Discrimination in Employment Act (ADEA), the commission is expected to release new ADEA enforcement guidelines.

Other issues facing the EEOC include its conflict with the DOJ over whether and to what extent Title VII protects the rights of LGBT individuals; whether it will revise its pay data collection proposal; how to resolve employer civility rules with the National Labor Relations Act (NLRA); and, in light of the DOJ's position on religious freedom and accommodation, how employers can balance the rights of LGBT employees with the religious beliefs of other employees.

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FEDERAL CONTRACTOR CORNER

Ondray T. Harris in place as new OFCCP director

by H. Juanita M. Beecher
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Ondray T. Harris, who served as the deputy chief of employment litigation at the U.S. Department of Justice (DOJ) during the George W. Bush administration, began leading the Office of Federal Contract Compliance Programs (OFCCP) on December 10, 2017. Harris initially joined the U.S. Department of Labor (DOL) in late spring, serving as a senior adviser at the Employment and Training Administration.

Harris was the DOJ's deputy chief of employment litigation between June 2005 and May 2007. During his time in that position, he litigated cases on behalf of the federal government and military personnel, and directed and reviewed the investigation of cases under Title VII and the Uniformed Services Employment and Reemployment Rights Act (USERRA). He was later confirmed by the Senate to serve three years as director of the DOJ's Community Relations Service.

Harris earned a bachelor's degree in history from Hampden-Sydney College and a law degree from Washington and Lee University School of Law.

GAO recommends improvements to OFCCP/EEOC oversight of tech industry

On November 16, 2017, the Government Accountability Office (GAO) issued a report recommending improved oversight by the Equal Employment Opportunity Commission (EEOC) and the OFCCP because of the lack of diversity in the tech industry. In researching its report, the GAO reviewed trends in the gender, racial, and ethnic composition of the technology sector's workforce and the EEOC and OFCCP's oversight of tech companies' compliance with EEO and affirmative action requirements.

After analyzing workforce data from the American Community Survey for 2005-2015, EEO-1 reports from 2007 through 2015, and OFCCP data on compliance reviews from FY 2011 to FY 2016 as well as interviewing agency officials, researchers, and workforce, industry, and company representatives, the GAO found that although the percentage of minority technology workers increased between 2005 and 2015, including significant gains for Hispanic and Asian workers, there was no growth for women or African Americans. The data showed that women, African Americans, and Hispanics make up a smaller percentage of the technology workforce—i.e., math, computing, and engineering jobs—compared to their representation in the general workforce, while Asians have a higher percentage of representation in the technology workforce than in the general workforce.

The GAO also found that although the EEOC and the OFCCP have taken steps to enforce EEO and affirmative action requirements, both agencies face limitations on their enforcement capabilities. The EEOC is limited by its complaint-based focus and the lack of industry-based data. The OFCCP's regulations and establishment-based focus limit its ability to hold contractors responsible for compliance. In response to those concerns, the GAO made six recommendations:

(1) The chair of the EEOC should develop a timeline for completing planned efforts to clean Integrated Mission System data for a one-year period and add missing industry code data.

(2) The OFCCP should analyze its internal process data from closed evaluations to understand the causes of delays during compliance evaluations and change the process accordingly.

(3) The OFCCP should require contractors to disaggregate demographic data for the purpose of setting placement goals in affirmative action plans rather than setting single goals for all minorities.

(4) The OFCCP should assess the quality of the methods it uses to incorporate consideration of disparities by industry into its process for selecting contractor establishments for compliance evaluation.

(5) The OFCCP should evaluate its current approach for identifying entities for compliance review and determine the modifications that are needed to reflect current workplace structures and locations or to ensure subcontractors are included.

(6) The OFCCP should evaluate the Functional Affirmative Action Program to assess its usefulness as an effective alternative to an establishment-based program and determine the improvements that could be made to better encourage contractor participation.

Landscape business to pay $100K to settle OFCCP claims

LandCare USA, LLC, a provider of commercial landscape services, will pay $100,000 to resolve

allegations of hiring discrimination at its Austin, Texas, location. A compliance review by the OFCCP found that the federal contractor discriminated against 47 female, 122 black, and 192 white applicants for laborer positions who were not hired. LandCare denies the allegations but has agreed to resolve the issue through a conciliation agreement. Under the agreement, the company will extend 45 job offers to female, black, and white applicants who were not hired at its Austin location.

No changes to OFCCP regs

The DOL's semiannual regulatory agenda issued on December 14 provided for no changes to the OFCCP's regulations for the first part of 2018.

Second round of buyouts for OFCCP employees

Recent reports have indicated that the DOL offered a second round of buyouts to OFCCP employees. The deadline for the second round was December 15, 2017. Approximately 28 employees either voluntarily resigned or took retirement during the first round of buyouts in September.

Don't forget the INAERP

The OFCCP's Indian and Native American Employment Rights Program (INAERP) advances awareness of employment rights and job opportunities for American Indians and Alaska Natives who work for or seek employment with companies doing business with the federal government. INAERP accomplishes that mission through compliance assistance and outreach to federal contractors and coordination with tribal representatives, community-based organizations, apprenticeship programs, workforce development agencies, and other federal stakeholders. For more information, visit www.dol.gov.ofccp/INAERP.

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Immigration, wage and hour enforcement

Immigration. The Trump administration has been extremely active in making legal immigration more difficult. After President Trump issued his Buy American, Hire American Executive Order, U.S. Citizenship and Immigration Services (USCIS) began restricting the ability of non-U.S. citizens to enter and remain in the country through its administrative processes, from requiring additional documentation for H-1B visas to reinstating interview requirements for green card holders. Meanwhile, the DOJ is suing employers that use H-1B workers instead of American workers rather than protecting immigrant workers who are being mistreated by U.S. employers. And one of the most widely debated issues in Congress is what to do with the nearly one million individuals covered by President Obama's Executive Order on Deferred Action for Childhood Arrivals (DACA).

It is expected that USCIS, the DOJ, and U.S. Immigration and Customs Enforcement (ICE) will continue to strictly enforce the immigration laws. As a result, employers should expect less flexibility in hiring or bringing in employees who are not already U.S. citizens or green card holders.

Wage and hour enforcement. Secretary Acosta has already issued notices that the Obama administration's overtime and tip-sharing rules will be revised. Although the Trump administration is planning to revise the overtime rule, the DOL has appealed a Texas court's decision that the agency doesn't have the authority to use salary to determine overtime eligibility. The agency will ask the court of appeals to stay (delay) the decision pending its revision of the proposed overtime rule. The DOL has also withdrawn the Obama-era guidance on joint employers and independent contractors, and reinstated the use of wage and hour opinion letters for employers.

Bottom line

Next year will be the first year the Trump administration will have all of its nominees to head federal agencies in place, so much of what was expected during 2017 may occur in 2018, including the elimination of most of the Obama-era Executive Orders. But while the federal government may be loosening regulations on employers, many states are ramping up their employment regulations, especially with regard to paid leave and fair pay.

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INSIDE THE NLRB

Trump administration oversees sweeping changes at NLRB

by Burton J. Fishman
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The Trump administration has been criticized in some quarters for giving little attention to labor and employment issues. That hasn't been the case at the National Labor Relations

Board (NLRB). With unparalleled speed, new NLRB members have been confirmed, and a new General Counsel is in place. And the Republican leadership on the Board is already reversing cases decided under the Obama administration, announcing new policies, and starting on the path to rescinding regulations promulgated by the previous Board.

Back to the future: NLRB precedents restored

The end of Philip Miscimarra's term on December 16, 2017, was clearly an incentive for the short-lived Republican majority on the NLRB to move quickly—and it did. In the space of a week, the NLRB reversed the Obama Board's ruling on joint-employer liability, discarded the limitations on companies' work and employee conduct rules, abolished "microunits," permitted unilateral changes to employment practices in keeping with employers' comparable past practices, and indicated its intent to revise the "quickie elections" rule.

Joint-employer rule reversed

Perhaps the most far-reaching and controversial of all the NLRB rulings issued on President Barack Obama's watch was *Browning-Ferris,* which broadly expanded the criteria for determining joint employment and thus joint liability for unfair labor practices. In *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.,* issued on December 14, the NLRB overturned that much-maligned ruling and returned to the previous standard for joint-employer liability.

Under *Hy-Brand,* two or more entities will be deemed joint employers under the National Labor Relations Act (NLRA) only if there is proof that one entity exercised *direct and immediate* control over the essential employment terms of the other entity's employees. Accordingly, under the once and future standard, proof of indirect control, contractually reserved control that has never been exercised, or control that is limited and routine will *not* be sufficient to establish a joint-employer relationship.

Impact of workplace rules on employees' protected activity

The Obama Board interpreted a 2004 decision, *Lutheran Heritage Village-Livonia,* in a way that plunged the concepts of "concerted activity" and "protected speech" into chaos. That interpretation made it close to impossible for an employer to confidently establish facially neutral workplace rules, policies, and employee handbook provisions without fear of an unfair labor practice charge. *Boeing Company and Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001,* issued on December 14, has changed that.

Lutheran Heritage posited the notion that employees are so finely attuned to their rights under the NLRA that they would "reasonably construe" commonplace prohibitions on foul language or exhortations to act with courtesy and civility toward coworkers and supervisors to prohibit the exercise of those rights. No more.

In *Boeing,* the NLRB overruled past cases in which employers were deemed to have violated the NLRA by maintaining rules requiring employees to foster "harmonious interactions and relationships" or maintain basic standards of civility in the workplace. The Board also stated that when it assesses challenged rules, it will now focus on two things: (1) the nature and extent of the rule's potential impact on NLRA rights and (2) legitimate justifications associated with the rule.

Community of interest: no microunits

In *Specialty Healthcare & Rehabilitation Center of Mobile,* the Obama Board permitted—and even encouraged—the "balkanizing" of a workforce by approving as "appropriate for bargaining" small units of employees carved out of the larger workforce, presumably to abet union-organizing efforts. Only by demonstrating that the excluded employees shared an "overwhelming" community of interest with the microunit could an employer prevail. In *PCC Structurals, Inc.,* issued on December 15, the Board reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases.

Bargaining obligations for unilateral changes

In *Raytheon Network Centric Systems,* issued on December 15, the NLRB revised the bargaining obligations required before an employer implements a unilateral "change" in employment matters, overruling *E.I. du Pont de Nemours.* Consistent with other cases dating back to 1964, the Board held that an employer's actions do not constitute an illicit change if they are similar in kind and degree to an established past practice consisting of comparable unilateral actions.

The Board held that principle applies regardless of whether (1) a collective bargaining agreement (CBA) was in effect when the past practice was created or (2) no CBA existed when the disputed actions were taken. Finally, the Board found that employment actions consistent with an established practice do not constitute a change requiring bargaining merely because they may involve some degree of discretion.

Quickie elections rule to be rescinded or revised

In 2015, the NLRB amended the representation election regulations at 29 CFR, parts 101 and 102, significantly shortening the time for organizing campaigns; requiring employers to disclose large amounts of data, including employees' personal contact information; demanding that an employer be nearly prescient in making early challenges to bargaining unit issues or risk waiving the

issues; and erecting other barriers to management's ability to oppose union-organizing efforts. Whether those dramatic changes had a significant impact on either the number of organizing efforts or the success of unions in elections is still being debated; nonetheless, the business community vocally opposed the new election rules. Their voices have been heard.

On December 12, the NLRB issued a Request for Information (RFI) regarding the "quickie election" rule. Comments on the Board's questions can be submitted until February 12, 2018. Regardless of the responses to the RFI, employers can be certain that change is coming.

Bottom line

"Elections have consequences" is an often repeated refrain in Washington. The wisdom of that adage is reflected most vividly in the actions of administrative agencies like the NLRB. Widely considered the most politicized entity in government, the Board is living up to that dubious distinction. Its thunderous start under the Trump administration is certain to be a prologue to similar rulings to come. The pendulum has swung.

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INSIDE THE EEOC

EEOC issues its 2018-22 draft strategic plan

by Leslie Silverman
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On December 8, 2017, the Equal Employment Opportunity Commission (EEOC) released its draft strategic plan for fiscal year (FY) 2018-22 for public comment. The release of the four-year strategic plan fulfills a congressional requirement that executive departments, government corporations, and independent agencies create a strategic plan outlining their mission, goals, performance measures, and budgetary plans.

The EEOC issued its previous strategic plan in February 2012 and then released a supplementary Strategic Enforcement Plan (SEP) in which it declared its substantive priorities. Although the EEOC updated the SEP just before the 2016 presidential election, it obtained permission to extend the 2012-16 strategic plan until 2018. The proposed strategic plan, the first issued under the Trump administration, has three major goals, which are similar, but not identical, to the agency's previous plan.

The EEOC's first goal focuses on how to strategically and effectively use its enforcement and litigation mechanisms to combat and prevent employment discrimination. Significantly, in the first goal, the commission underscores the substantive priorities in its SEP for FY 2017-21, which were approved under the Obama administration. Although some have questioned the future of the EEOC's systemic program, the proposed strategic plan recognizes the significant impact of the agency's systemic investigations and litigation, and reaffirms that the systemic program will continue to be a top priority.

The second strategic goal differs from the EEOC's previous strategic plan in that the commission plans to use its education and outreach tools not only to prevent employment discrimination but also to "promote inclusive workplaces." The new focus on promoting inclusive workplaces stems from the 2016 findings and recommendations of the EEOC's Select Task Force on the Study of Harassment in the Workplace, led by acting chair Victoria Lipnic and commissioner Chai Feldblum.

Finally, to meet its third goal, achieving organizational excellence, the EEOC plans to conduct annual employee focus groups and assessments and use enhanced technology and data to help improve its workforce, workplace culture, and productivity.

President Donald Trump's appointees to the EEOC, chair-designee Janet Dhillon and commissioner-designee Daniel Gade are currently awaiting Senate confirmation. While the public has until January 8, 2018 to submit comments on the EEOC's draft strategic plan, it's likely that the agency will hold off on voting on the final strategic plan until the Trump appointees are on board.

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IMMIGRATION

DACA update: What's happening with the phaseout?

by Elaine C. Young
Kirton | McConkie

Several months ago, the Trump administration announced the phaseout of Deferred Action for Childhood Arrivals (DACA). Based on 2017 estimates, the phaseout would mean that almost 700,000 undocumented immigrant youths would lose their work authorization on a rolling basis, beginning in 2017.

Where do things stand?

Although the loss of work authorization for any group of employees can be difficult for employers to manage, the DACA phaseout is relatively straightforward. Here's how it's working right now:

- At the time the administration announced the phaseout, almost all DACA youths held two-year employment authorization documents (EADs). EAD renewal applications are normally filed three to four months prior to the expiration of the old documents.
- Employees who hold DACA EADs are authorized to work until their EAD expires unless the EAD or DACA grant is revoked or terminated for another reason (e.g., the commission of certain crimes).
- EADs expiring between September 5, 2017, and March 5, 2018, can be renewed if an application was filed by October 5, 2017. According to U.S. Citizenship and Immigration Services (USCIS), about 154,000 DACA beneficiaries timely filed their renewal applications.
- DACA beneficiaries who failed to file their EAD renewal applications by October 5, 2017, have already started losing their work authorization on a rolling basis as their EADs expire.
- About 535,000 DACA EADs were set to expire after March 5, 2018, and thus were not renewable. In other words, the majority of DACA youths will lose their work authorization beginning in March. According to statistics released by USCIS, the peak loss of work authorization will occur between January 2019 and March 2019.
- Delays in processing EADs may mean small gaps in work authorization if an EAD expires before the new EAD is issued. DACA-related EADs do not benefit from the automatic extension of work authorization the U.S. Department of Homeland Security (DHS) introduced in January 2017 for some other categories of expiring EADs.
- The last DACA EADs—roughly 25,000 of them—should expire in early 2020.

USCIS inadvertently rejected some timely filed DACA EADs, in some cases due to mail delivery problems by the U.S. Postal Service. In November, USCIS announced that it would accept resubmission of renewal requests if the applicant can provide proof that the request was originally mailed in a timely manner.

Employees whose DACA EADs are lost, stolen, or damaged can apply for a replacement EAD. The application filing fee is a steep $495. However, without a receipt for the replacement EAD, an employee starting a new job likely will not have evidence sufficient to establish her employment eligibility for I-9 purposes.

Lawmakers still hopeful that DREAM Act will be passed

Before recessing for the holidays, Congress passed a spending bill to avert a government shutdown until at least January 19, but without the Development, Relief, and Education for Alien Minors Act (DREAM Act). Nevertheless, Democratic and Republican lawmakers are still confident that the DREAM Act can be passed.

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