KPMG

GMS Flash Alert

Immigration Edition

2017-135 | September 12, 2017

United States - Impact on Employers of Government's Ending of DACA Program

On September 5, 2017, U.S. Attorney General Jeffrey Sessions stated that the implementation of the DACA[1] program by the previous administration had been an unconstitutional use of executive action.[2] The Attorney General said that the U.S. Department of Justice could not successfully defend the DACA program after a group of state attorneys general threatened to sue the Trump administration if it did not terminate the program.

Unless the U.S. Congress takes action within the next six months, the policy announced on September 5 by the U.S. administration to rescind the DACA program will effectively end employment authorization for beneficiaries of the DACA program.

It is important to note that DACA beneficiaries who are employed and holding employment authorization document (EAD) cards expiring prior to March 5, 2018, remain eligible to file EAD renewal applications, but the renewal application must be received by U.S. Citizenship and Immigration Services (USCIS) **on or before October 5, 2017**.

WHY THIS MATTERS

An estimated 800,000 individuals are currently enrolled in the DACA program, with estimates of approximately 75 percent of these individuals currently employed. If Congress does not pass legislation to replace the DACA program, employers need to prepare for the likely loss of valued employees via termination.

How the DACA Phase-Out Works

Employees who are DACA beneficiaries remain work authorized throughout the validity period of their employment authorization. Employers should rely upon their record of Form I-9 expiration dates to determine the expiration of workers' employment authorization. Under the phase-out, no new DACA applications will be accepted as of September

5, 2017 (with limited case-by-case exceptions, dependent on officer discretion). However, DACA employees who hold employment authorization document (EAD) cards expiring prior to **March 5, 2018**, remain eligible to file EAD renewal applications, but the renewal application must be received by U.S. Citizenship and Immigration Services (USCIS) **on or before October 5, 2017**.

KPMG NOTE

❖ Employers should review their employment authorization records to determine whether they have any employees who are employed under DACA, and whose EADs (DACA Category Code C33) expire **before March 5, 2018**, to help *ensure timely renewal filing* **on or before October 5, 2017**.

❖ Employers must be mindful not to treat DACA beneficiaries' employment differently than other employees. Employers take a risk of being found to have discriminated against a DACA beneficiary who is terminated (based on the administration's decision to terminate the DACA program) while he or she continues to possess employment authorization.

KPMG Law LLP will continue to provide updates regarding the impact of this requirement as and when they become available.

FOOTNOTES:

1 DACA stands for "Deferred Action for Childhood Arrivals." For more on DACA, click here.

2 To read Attorney General Sessions' September 5 remarks on DACA, click here.

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We invite you to read the latest *The Expatriate Administrator* article: "Budgeting for an Assignment? Look out for Those "Goodbye" Taxes"!

Departure taxes, sometimes known as "exit" taxes, are too frequently an "after-thought" for employees taking an international assignment, and for the global mobility managers who oversee their assignments. Failure to properly prepare an employee on international assignment for his tax obligations and potential liabilities when he leaves the host country, can expose that employee, and very likely his company, to a higher-than-expected tax bill.

This article by GMS professional Deepa Venkatraghvan with KPMG LLP (U.S.) highlights the fairly complex subject of "departure tax" and looks at some popular assignment countries that impose them. Deepa also emphasizes how, with foresight and planning, companies can accrue for these costs and formulate assignment and tax equalization policies ahead of time, thus informing and preparing the parties concerned and mitigating risk. To read more, click here.

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada:

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