

PROVIDING IMMIGRANT PROTECTION THROUGH DEFERRED ACTION: DALE

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Migration in the Americas Project is a policy and research collective of the **University of Wisconsin-Madison** focused on assessing migration policy and developing ways to reduce risk and harm to make movement and residence safer for migrants throughout the Western Hemisphere.



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INTRODUCTION

For years, immigrants have faced unfair wages and poor working conditions because their employers could exploit them due to their immigration status. It is common for abusive employers to use threats of ICE and police involvement – implying possible deportation – to prevent immigrant workers from asserting their workers’ rights. These intimidation tactics seek to silence immigration workers about potential abuses experienced, such as wage theft, dangerous working conditions, and even sexual assault. (NILC, 2024a).

Immigrant Workers:

- *experience **300** more workplace fatalities per year than nonimmigrant workers*
- *experience **61,000** more workplace injuries per year than nonimmigrant workers*
- ***76%** of immigrant workers experience wage theft*

(Bernhardt et al., 2015)

The lack of meaningful protections against employer intimidation has not only had a chilling effect on immigrant workers coming forward to report labor violations but has also stymied labor agencies in investigating abuses and undermined safety and fairness for all workers. Yet over the years, many brave workers have come forward despite the risks in order to assert their rights and – in partnership with immigration and labor advocates – change government policy. (NILC, 2024a).

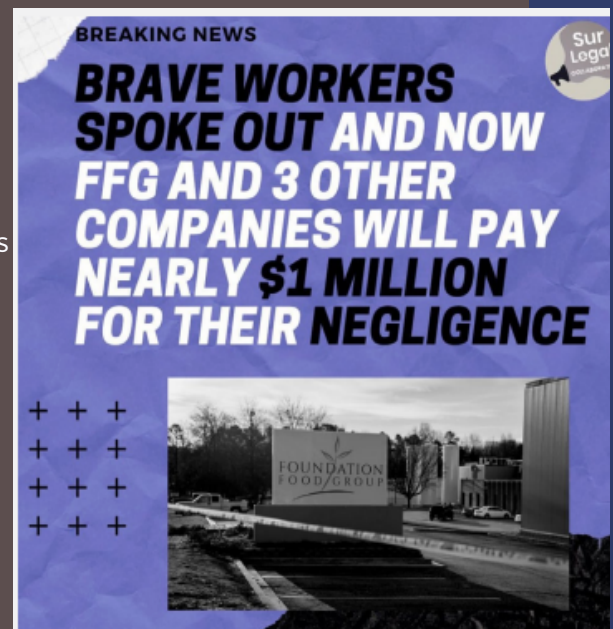
Those years of advocacy paid off in January 2023, when the Department of Homeland Security (DHS) announced The Deferred Action for Labor Enforcement (DALE), a program designed to protect immigrant workers from labor exploitations and abuses while encouraging them to cooperate with labor enforcement agencies. To encourage immigrant workers to speak up without fear of immigration consequences, DALE provides eligible immigrant workers who report labor violations temporary protection from deportation and a work permit. (DHS, 2023)

First Steps towards DALE: Deaths of 6 poultry plant workers “entirely avoidable”

In January 2021, Gainesville, Georgia, became the site of a tragic and entirely preventable liquid nitrogen leak at a poultry plant that killed six workers. The company where this took place, known for employing immigrants, knew the problems with the nitrogen system and took no precautionary measures. As such, the workers working in proximity to these toxic chemicals did not receive any training on the deadly effects of nitrogen exposure. (NILC, 2024a).

Due to these horrific events, a grassroots organization formed a response coalition to provide impacted immigrant workers with legal assistance, mutual aid, and other community support. Despite fear of deportation and retaliation, the workers cooperated with federal investigators to investigate the company’s behavior in the nitrogen leak. As a result of the workers’ cooperation, the company received 59 citations and over \$1 million in fines. (NILC, 2024a; Gisbon, 2021.)

This case led to some of the first grants of deferred action by the Biden administration well before DHS announced formal guidance. The events in Gainesville demonstrated both the need for formal DHS guidance and the positive impact immigration protections could make in the enforcement of labor laws. Slowly, these efforts led to the creation of DALE. (NILC, 2024a; Gisbon, 2021.)



Graphic created by Sur Legal for social media in English and Spanish to educate workers and advocates about the OSHA citations that were issued as a part of their investigation into the nitrogen leak. (NILC, 2024a).

What is Deferred Action?

Deferred action is a discretionary determination to defer the removal of an individual as an act of prosecutorial discretion. Deferred action does not grant lawful immigration status or excuse any previous or future periods of unlawful presence. However, an individual who has received deferred action is authorized by DHS to be in the United States for the duration of the deferred action period. Deferred action recipients may also be eligible for employment authorization for the duration of their deferred action period. (Requa-Trautz et al., 2023). A popular deferred action program is the Deferred Action for Childhood Arrivals (DACA), a program that allows certain people who came to the United States as children and meet several guidelines to request consideration of deferred action for a period of 2 years, subject to renewal. (DHS, 2024).

What is Deferred Action for Labor Enforcement Specifically?

Deferred action protections based on labor enforcement refer to a kind of temporary protection from deportation to support the labor enforcement interests of a federal, state, or local labor agency. (Requa-Trautz et al., 2023). These protections exist and can be sought by workers when a labor agency—including the U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), and the U.S. Equal Employment Opportunity Commission (EEOC)—requests deferred action from DHS. This serves as a way to respect the labor agency's investigative needs and authority, to ensure that a worker's immigration status will not be used against them when participating in the labor agency's investigation or other processes. The joint goal of labor agencies and DHS is to ensure labor law compliance. This type of deferred action protection is, first and foremost, a labor enforcement tool that supports immigrant workers' participation in a labor investigation, litigation, or other labor enforcement activity (Requa-Trautz et al., 2023).



DALE is:

- At the discretion of DHS and granted by DHS on a case-by-case, individual basis for workers who fall within the scope of a labor agency Statement of Interest.
- Is a temporary protection from deportation and a work authorization that lasts up to 4 years.
- Is potentially renewable, depending on whether the labor agency sees a “continued enforcement interest” in the case. The potential renewal is at the discretion of DHS.



DALE is NOT:

- A form of permanent immigration relief, lawful status, or a visa. It is a temporary protection from deportation.
- A protection that allows workers to leave and reenter the United States.

WHO IS ELIGIBLE TO BENEFIT FROM DALE?

To be eligible for DALE, you must:

(1) Be an immigrant worker who is a victim OR witness of a workplace violation

What are workers' rights?

- To be paid for all hours worked (including overtime);
- To have a safe work environment;
- To organize and speak up;
- To be free of discrimination;
- To not be retaliated against.

(2) Have an open labor investigation

How to open a labor investigation?

- File a labor agency complaint; a document that formally alleges an employer has violated the law.
- Labor agency will review the complaint and, if appropriate, begin investigation.
- If the labor agency will begin to investigate the employer, the employer will NOT know who complained.

(3) Obtain a Statement of Interest (SOI) letter from a labor agency

What is a "Statement of Interest" letter?

- An SOI is a letter from a labor agency stating that the agency is investigating your employer for labor violations.
- The SOI letter should describe the worksite generally; it should NOT name any worker(s) in particular.
- The letter is addressed to DHS requesting that DHS grant deferred action to workers at the given worksite.
- A worker's advocate (such as an attorney, organizer, or social worker) can request an SOI from the labor agency.

How to apply for DALE?

Applying for DALE involves submitting a request through a specific U.S. Citizenship and Immigration Services (USCIS) process. (Del Rosario, 2023).

The immigration worker must file the following documents to USCIS:

- *Form G-325A*, Biographic Information for Deferred Action
- *Form I-765*, Application for Employment Authorization + Filing Fee
- *Form G-28*, Notice of Entry of Appearance as Attorney or Accredited Representative, if applicable
- The obtained SOI letter from the labor agency
- Supporting evidence to establish that the worker falls within the category of workers identified in the SOI (W-2s, pay stubs, time cards, etc.)
- Proof of immigrant worker's identity and nationality (ex. passport)

While the application process is ongoing, applicants must attend a biometrics appointment. Typically, the applicant will receive a final decision from USCIS within four to six months. If approved, DALE offers a four-year work permit (previously, it was issued for two years, but in July 2024, DHS extended the work permit duration to four years). This permit allows workers to be legally employed in the United States during the deferred action period. (NILC 2024b).

Who can help you with this process?

- Community organizations with volunteer resources
- Law school immigration clinics
- Pro-bono or private immigration attorney (Requa-Trautz, 2023)

STEPS OF DALE PROCESS



(APM Immigration, 2024)

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