

Frequently Asked Questions on AG’s Role in Supporting Worker Requests for Deferred Action to Provide Protection from Immigration Related Retaliation

The Massachusetts Office of the Attorney General’s Office (AGO) enforces labor laws to promote economic justice and ensure workplace rights throughout the state. Effective investigation of complaints and enforcement of workers’ rights depends on the cooperation of all workers regardless of immigration status. AGO enforces workplace laws and protects workers’ rights regardless of the immigration status of the affected workers. AGO does not enforce immigration laws. **AGO does not ask about a worker’s immigration status, and the AGO works to ensure that all workers in Massachusetts are protected regardless of immigration status¹.**

Undocumented or immigrant workers may fear providing information to governmental officials because they are afraid that it will lead to deportation or arrest. To address this fear and ensure the enforcement of our laws, AGO has developed a process to support workers seeking immigration-related protection through requests for deferred action and work authorization from the [U.S. Department of Homeland Security](#) (DHS).

1. What is “deferred action” for workers?

Deferred action is a discretionary determination by DHS to defer the deportation or removal of an individual. On January 13, 2023, DHS announced that it would consider applications for deferred action from immigrant workers if they meet the following criteria:

1. The workers are victims or witnesses in a labor/workplace dispute;
2. The dispute is being investigated by a federal, state, or local labor agency; and
3. The labor agency has provided a letter or statement of interest.

The goal of this initiative was to ensure that workers feel protected to come forward and cooperate with workplace investigations and to encourage governmental enforcement of workplace laws. Deferred action provides workers with access to an employment card and a social security card. But it does not provide a pathway to permanent immigration status.

Eligible workers should consult with an experienced immigration attorney to determine if they are eligible for deferred action and to understand any risks of applying. (See #12 below.)

2. Does AGO support requests for deferred action for workers involved in AGO cases?

Yes. AGO may submit a “Statement of Interest” to DHS if AGO is engaged in an active investigation or enforcement action. AGO will consider requests on a case-by-case basis for a Statement of Interest where any part of AGO is enforcing a labor or employment law against your employer. Cases will be considered where there is a fear of immigration-related retaliation that might deter workers from cooperating with an AGO investigation or enforcement action.

¹ See AGO Advisory on the Rights of Immigrant Workers: <https://www.mass.gov/doc/advisory-on-the-wage-and-hour-rights-of-immigrant-workers/download>

AGO will typically submit a Statement of Interest for an entire worksite and not name individual workers.

3. How do I ask AGO for a Statement of Interest in support of my request that DHS grant deferred action?

If you believe AGO has an active investigation or enforcement action against your employer, you can send the request to SOIrequest@mass.gov with the subject line, “Request for Statement of Interest.” An active investigation or enforcement action refers to a complaint or allegation of a violation of law that AGO is investigating or enforcing through administrative appeals or in court against your employer. Closed cases will not qualify.

A request may be made by a worker, advocate, or representative. Requests may also be made on behalf of a group of workers.

Requests should include as much of the following information as possible:

- Name and address of the employer;
- Worksite addresses;
- AGO case number and the name of the assigned AGO investigator, if known;
- A brief description of the case and the impact of the violations on workers;
- A description of any retaliation or threats (or fear of such) workers at the worksite may have witnessed or experienced related to labor disputes or violations and/or immigration status;
- A contact person who can respond to follow-up questions from AGO.

NOTE: Disclosure of individual worker names is not necessary to establish that AGO has an active investigation or enforcement action. When emailing a request, requesters should not disclose:

- Individual workers’ immigration histories or needs;
- Sensitive or personally identifiable information, including dates of birth, Social Security Numbers, or Alien Registration Numbers.

4. After I submit my request to AGO for a Statement of Interest, what will AGO do?

AGO will decide on a case-by-case basis whether to submit a Statement of Interest to support a request for deferred action to DHS and may contact the requester or their representative for more information. If AGO decides to support the request, AGO will send DHS the Statement of Interest and provide the requester or their representative with a copy of the Statement once it has been accepted by DHS.

5. What happens if AGO declines to submit a Statement of Interest?

If AGO decides not to submit a Statement of Interest to DHS, AGO will inform the requester or their representative in a timely manner. Statements of Interest are wholly discretionary and

decided on a case-by-case basis. If AGO decides not to provide a Statement of Interest, AGO will not communicate with DHS about the request. A decision not to submit a Statement of Interest will not affect AGO's labor investigation or enforcement action.

6. Does submission of a Statement of Interest by AGO provide any immigration status or protection to a worker?

No. A submission by AGO of a Statement of Interest to DHS does not provide immigration status, nor any specific immigration protection, to individual workers. Instead, an individual worker must independently request deferred action from DHS directly and include AGO's submission of a Statement of Interest as part of that request. All applications are mailed to U.S. Citizenship and Immigration Services (USCIS), and there is a list of applications that must be completed available on its website at: <https://www.dhs.gov/enforcement-labor-and-employment-laws>.

7. Does the submission of an AGO Statement of Interest guarantee that DHS will approve deferred action in a particular case?

No. DHS exercises sole discretion in deciding whether to exercise immigration-related deferred action. The submission of a statement of interest from AGO does not guarantee that DHS will grant deferred action in any individual case.

8. Will AGO seek deferred action for me?

No. AGO's role is limited to supporting workers' requests for deferred action by submitting a Statement of Interest explaining why deferred action in a particular case would aid AGO's active investigation or enforcement action. Individual workers, or their advocates or representatives, must request that DHS exercise its prosecutorial discretion by granting deferred action. For more information on how to request deferred action from DHS, visit: <https://www.dhs.gov/enforcement-labor-and-employment-laws>.

Each worker should consider having a complete screening from an experienced immigration attorney to better understand their eligibility and the implications of submitting a request for deferred action to DHS. Below (question #12) has information about how you can find pro bono (free) legal service providers.

9. Will AGO keep the information contained in a request confidential?

In keeping with AGO's standard practices, to the greatest extent permitted by law, AGO will keep requests for a Statement of Interest confidential. AGO will share Statements of Interest with DHS, but such Statements typically will not contain any personally identifiable information of any individual, such as names, birth dates, etc., without their prior permission and notification.

10. Can AGO provide a Statement of Interest to DHS without receiving a request?

Yes. Where appropriate, AGO can submit a Statement of Interest regarding a worksite's labor dispute to further its investigation or enforcement action on its own without receiving a request.

11. Are there any other forms of immigration relief that might be available to victims and witnesses of workplace disputes?

Some workers may be eligible for additional immigration relief under federal law. For example, certain victims of crime may be eligible for U nonimmigrant status ("U visas"), T nonimmigrant status ("T visas"), and Continued Presence. U Visas provide legal status to victims of certain qualifying criminal activities who have suffered substantial physical or mental abuse, and have information about that crime, and who have been, are being, or are likely to be helpful to law enforcement. T Visas provide legal status to certain victims of human trafficking who assist law enforcement authorities in the investigation or prosecution of trafficking crimes and meet other requirements. Continued Presence is a form of deferred action available to victims of a severe form of trafficking in persons who are a witness in a potential criminal human trafficking investigation or prosecution.

AGO may assist certain victims who assist our office with an investigation in seeking protection from immigration enforcement by supporting workers' requests for U or T visa certification, Continued Presence, or deferred action. As with deferred action, a worker must submit these applications to the U.S. Citizenship and Immigration Service (USCIS). USCIS then has the discretion to decide whether to approve that application and ultimately decides whether to grant these benefits. For more information about U or T visas or Continued Presence, visit <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes>.

12. Where can I get more information?

Questions about the process outlined above may be directed to SOIrequest@mass.gov before a request is submitted.

AGO cannot provide legal advice on the benefits and risks of seeking deferred action. Individuals should seek immigration law advice before deciding whether to request a Statement of Interest or whether to submit a request for the use of prosecutorial discretion to DHS.

For a list of resources: <https://www.mass.gov/service-details/finding-legal-help> & <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>