



Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes

Frequently Asked Questions For Workers and Their Representatives

1. Does the Department of Labor take requests to express support for immigration-related prosecutorial discretion for workers involved in labor disputes?

Yes. We consider such requests on a case-by-case basis. Particularly because the Department of Labor (“DOL” or “Department”) does not inquire into immigration status as part of DOL investigations or proceedings, DOL remains open to requests from workers to express DOL support for their requests to the Department of Homeland Security (DHS) seeking immigration-related prosecutorial discretion. For DOL to effectuate the laws under its jurisdiction, regardless of immigration status, workers must feel free to participate in the Department’s investigations and proceedings without fear of retaliation or immigration-related consequences.

DOL’s mission and effective enforcement depends on the cooperation of workers. However, vulnerable workers who lack work authorization or sufficiently “portable” immigration status are often reluctant to report violations, engage with government enforcement agencies, or otherwise exercise their rights. For example, undocumented workers who experience labor law violations may fear that cooperating with an investigation will result in the disclosure of their immigration status or that of family members, or that it will result in immigration-based retaliation from their employers and adverse immigration consequences for themselves or their family. As a result, both workers and the Department face barriers to equitable and effective enforcement of workplace rights and protections, and the many employers that adhere to labor and employment laws face unfair competition.

DOL has long supported prosecutorial discretion on a case-by-case basis, to further enforcement of laws within DOL’s jurisdiction.

This document clarifies the Department’s process for workers and their representatives to request DOL’s support for DHS to exercise prosecutorial discretion on a case-by-case basis to strengthen DOL’s enforcement and worker protection efforts.

2. How do I ask DOL to notify DHS about a labor dispute with my employer and support my request that DHS exercise immigration-related prosecutorial discretion?

Workers who are experiencing a labor dispute at their worksite can notify DOL of the labor dispute and request that DOL submit a “Statement of DOL Interest” in support of a request to DHS for immigration-related prosecutorial discretion. Requesters should send the request to statementrequests@dol.gov with the subject line “Request for Statement of DOL Interest.” In the emailed request, requesters are encouraged to provide enough information for the Department to identify the worksite that is the subject of the labor dispute.

Additionally, requesters are invited to include facts that support any factors listed in FAQ #3 that DOL may consider in responding to these requests, including but not limited to:

- A description of the labor dispute and how it is related to the laws enforced by DOL;
- A description of any retaliation or threats workers at the worksite may have witnessed or experienced related to labor disputes; and
- A description of how fear among workers at the worksite of potential immigration-related retaliation or other immigration enforcement in the future is likely to deter workers from reporting violations related to the labor dispute to DOL or otherwise cooperating with DOL. As relevant, please specify the time, place, and manner of any such facts.

DOL may contact the requester with questions or for additional information necessary to evaluate the request, so it will be helpful to include reliable contact information for the requester. A request may be made by a worker or by an advocate or representative. Requests may be made on behalf of a group of workers.

NOTE: DOL will evaluate requests to determine whether a labor dispute related to a law enforced by DOL exists at a particular worksite and whether and how immigration-related prosecutorial discretion for workers at the worksite would help DOL carry out its enforcement mission and priorities. For more information, see FAQ #3. Disclosure of individual worker names may not be necessary to establish that a labor dispute exists, depending on, for instance, DOL's additional corroborating information.

In the emailed request, requesters should not disclose:

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

Questions about the process outlined above may also be directed to statementrequests@dol.gov before a request is submitted.

3. What factors will the Department consider when deciding whether to provide a Statement of DOL Interest in a worksite's labor dispute?

DOL will assess each request on a case-by-case basis and in consideration of its specific enforcement needs. Factors that may be considered include, but are not limited to:

- DOL's need for witnesses to participate in its investigation and/or possible enforcement;
- Whether DHS's use of immigration-related prosecutorial discretion would support DOL's interest in holding labor law violators accountable for such violations;
- Whether workers are experiencing retaliation, threats of retaliation, or fear retaliation and/or may be "chilled" from reporting violations of the law or participating in DOL enforcement;
- Whether immigration enforcement concerning workers who may be witnesses to or victims of a violation of laws within DOL's jurisdiction could impede DOL's ability to enforce the labor laws or provide all available remedies within its jurisdiction;
- Likelihood that immigration enforcement could be an instrument used to undermine DOL's enforcement of laws in the geographic area or industry and/or give rise to further immigration-based retaliation.

The Department will weigh factors listed above based on the specific circumstances of the labor dispute. DOL may contact the requester with questions or for additional information necessary to evaluate the request.

4. After I submit my request to DOL for a “Statement of DOL Interest” in a labor dispute, what will DOL do?

DOL will determine whether its enforcement interests justify support for a request of prosecutorial discretion by DHS. If so, and in its discretion, DOL may send both DHS and the requester a Statement of DOL Interest informing DHS that DOL believes DHS’s use of its prosecutorial discretion for employees at a particular worksite is necessary for DOL to effectively carry out its mission, and that therefore it supports workers’ requests for immigration-related prosecutorial discretion.

For example, where workers have faced retaliation for complaining about their wages or working conditions, and fear retaliatory immigration action if they participate in a DOL investigation or legal proceeding, DHS’s use of prosecutorial discretion may help to alleviate that fear and further DOL’s investigation or enforcement action. Worker participation strengthens DOL’s ability to obtain redress and employer compliance.

5. How do individual workers who experience a labor dispute ask DHS to exercise its immigration-related prosecutorial discretion in their case?

Workers seeking immigration-related prosecutorial discretion from DHS must make such requests directly to DHS. This FAQ provides information about how a worker could seek a Statement of DOL Interest regarding a labor dispute involving their employer. A worker may wish to first seek a Statement of DOL Interest from DOL and then include it as part of a request to DHS asking for the exercise of prosecutorial discretion in their case.

NOTE: Workers may have additional bases for requesting DHS’s exercise of prosecutorial discretion that are not addressed in this FAQ. For more information, you may wish to seek immigration legal advice. For a list of pro bono legal service providers visit: <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>. A specific outcome for any individual worker cannot be guaranteed; each worker should consider seeking counsel to better understand the individual implications of submitting a request for the use of prosecutorial discretion to DHS.

6. Does a Statement of DOL Interest in a worksite’s labor dispute convey any immigration status or protection to a worker?

No. A Statement of DOL Interest in a labor dispute does not confer immigration status, nor any specific immigration protection, to individual workers. Instead, individual workers may choose to include the Statement of DOL Interest as part of a request directed to DHS that asks DHS to use its prosecutorial discretion.

7. Does the Statement of DOL Interest guarantee that DHS will use immigration-related prosecutorial discretion in a particular case?

No. The decision of whether to exercise immigration-related prosecutorial discretion rests solely with DHS. Support for prosecutorial discretion from DOL does not guarantee that DHS will exercise prosecutorial discretion favorably in any individual case. Individual workers must independently request that DHS exercise its prosecutorial discretion in favor of their request.

8. Which agencies within the Department will consider issuing a Statement of DOL Interest concerning immigration-related prosecutorial discretion?

DOL will currently consider requests for Statements of DOL Interest related to enforcement of laws within the jurisdiction of the Wage and Hour Division (WHD), the Occupational Safety and Health Administration (OSHA), the Office of Federal Contract Compliance Programs (OFCCP), and the Office of Labor-Management Standards (OLMS).

9. Will DOL keep the information contained in my request confidential?

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

10. How long does the Department expect it will take to respond to these requests?

The Department will endeavor to respond to the requester within 30 days with a determination on the request or a status update. DOL will seek to provide status updates every 30 days after a request remains under consideration.

11. What should a requester expect if the Department declines to provide a Statement of DOL interest in a worksite's labor dispute?

If DOL decides not to provide a Statement of DOL Interest in a labor dispute, the requester or their representative will be informed of the decision as soon as possible. Statements of DOL Interest are wholly discretionary.

If the Department decides not to provide a Statement of DOL Interest in a labor dispute, DOL **will not** communicate with DHS about the request. DOL **does not** enforce worksite immigration law and **will seek to enforce** the relevant laws within its jurisdiction regardless of workers' immigration status.

12. What role does DOL play in DHS's adjudication of an individual worker's request for DHS's use of immigration-related prosecutorial discretion?

The decision about whether to use immigration-related prosecutorial discretion rests solely with DHS. DOL or other law enforcement agencies may inform DHS of a need for immigration enforcement discretion to carry out their missions and may respond to requests for additional information from DHS regarding requests for immigration enforcement discretion.

13. What if I want to add additional information to my initial request to DOL for a Statement of DOL Interest?

Information about the request generally may be supplemented as needed by the requester using the email address provided above.

14. Where can I get more information about whether I should request a Statement of DOL Interest and/or seek DHS's use of immigration-related prosecutorial discretion?

You may wish to seek immigration law advice before deciding whether to request a Statement of DOL Interest or whether to submit a request for the use of prosecutorial discretion to DHS. For a list of pro bono legal service providers visit: <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>. A specific outcome for any individual worker cannot be guaranteed; each worker should consider seeking counsel to better understand the individual implications of submitting a request for the use of prosecutorial discretion to DHS.

15. Can DOL provide a Statement of DOL Interest in a labor dispute to DHS without receiving a request for such a statement?

Yes. Where appropriate, the Department issues Statements of DOL Interest or similar requests regarding a worksite's labor dispute on its own without receiving a request to further the enforcement of its own laws.