

Honey, I Shrank the Company

Immigration Consequences of Downsizing,
Rightsizing, and Similar RIFs

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Categories of Foreign Workers

- Nonimmigrant
 - Employees authorized to work in the U.S. on a temporary basis
- Nonimmigrant but in the immigrant process
 - Nonimmigrant employees currently seeking U.S. permanent residency
- Immigrant
 - U.S. permanent resident employees (*i.e.* “green card” holders)

Termination of Nonimmigrants

- Termination can have immediate adverse consequences on their immigration status
- Nonimmigrant status ends upon termination
 - No official grace period for layoffs, even if employer provides severance pay
 - Also applies to their dependent family members
- Unlawful presence may accrue after petition revocation
 - Bars on admission to the U.S. if laid-off employee accrues 180+ days of unlawful presence

Employer Obligations for Nonimmigrants

- Termination of nonimmigrant employees can also trigger compliance obligations that employers must act on
- Notify USCIS of termination: H-1B, O and P
- Bona fide termination to avoid liability for back wages: H-1B & E-3
 - Notify employee of termination
 - Notify USCIS of termination and withdraw the LCA
 - *Offer* for reasonable costs of return transportation
 - Only applies if the employee is leaving the U.S.
 - Does not extend to dependents or goods

Employer Obligations for Nonimmigrants

- H-1B public access files
 - Must be maintained for one year from the date of the employee's termination
- Form I-9
 - Must retain for 3 years from hiring date or one year after employment was terminated, whichever is longer

Termination of Employees in Immigrant Process

- Effect of termination varies depending on where employee is in immigrant process
- Current employment does not directly control future offer, so process may remain viable if future offer of employment is not ended by termination
- Employee terminated while PERM is pending
 - May need to restart immigrant process with new employer

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First appeared as part of the conference materials for the

40th Annual Conference on Immigration and Nationality Law session

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