

# Honey, I Shrank the Company

Immigration Consequences of Downsizing,  
Rightsizing, and Similar RIFs

By: James Devlin Cypert and Francisco J. Garcia



## 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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Honey, I Shrank the Company: Immigration Consequences of Downsizing, Rightsizing, and Similar RIFs

Also available as part of the eCourse

[2016 Immigration and Nationality Law eConference](#)

First appeared as part of the conference materials for the

40<sup>th</sup> Annual Conference on Immigration and Nationality Law session

"Honey, I Shrank the Company: Immigration Consequences of Downsizing, Rightsizing, and Similar RIFs"