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So You Thought Your Employee Was Terminated, Guess Again!

By Joel H. Paget, Ryan, Swanson & Cleveland, PLLC

Normally when an employer terminates the services of an employee, both know it. However, if the employee is working for the employer under the non-immigrant status of H-1B there are additional steps to be taken if there is going to be a "bona fide termination of the employment relationship."

In order for there to be a "bona fide termination of the employment relationship" there must be:

(1) notice to the employee that the employment relationship has ended;

(2) notice to the USCIS that the employment relationship has ended;

(3) revocation of the Labor Condition Application validity period during which the non-immigrant H-1B worker can remain in the United States to work for the specific employer; and

(4) payment for transportation of the non-immigrant H-1B worker back to his/her last place of foreign residence "if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to Section 214(c)(5) of the Act." [(But payment of transportation of the alien is not required "if the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition ... [and thereby] has not been dismissed." [§214(E)(5)(A) of the Immigration and Nationality Act; 8 CFR §214.2(h)(4)(iii)(E)]

The H-1B employee is not terminated until the employer has completed all four steps. Until then, the employer remains liable for the employee's wages as stated on the Labor Condition Application, even though the employee is no longer showing up for work.

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