Global Immigration alert

September 2026

United States

DHS proposes to eliminate 60-day grace period for nonimmigrant visa holders

Executive summary

On 11 September 2026, the US Department of Homeland Security (DHS) published a notice of proposed rulemaking proposing to remove the up to 60-day grace period that certain nonimmigrant visa holders can be afforded following cessation of employment. If enacted, the regulatory change would require that E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN workers, as well as their dependents, depart the US immediately after their last date of employment with their sponsoring employer, absent another lawful basis for remaining in the country.

DHS will accept comments on the proposed rule until 10 November 2026.

Background and analysis

DHS established the discretionary 60-day grace period in 2017 to provide certain high-skilled nonimmigrant workers with additional time to seek new employment, apply for a change to a different nonimmigrant status, or otherwise maintain lawful status in the US following the end of their employment. Under the current regulations, eligible workers and their dependents are generally not considered to have failed to maintain nonimmigrant status for up to 60 days following the cessation of qualifying employment.

With the new rule, DHS now proposes to remove this provision to restore "a direct relationship between . . . nonimmigrant status and the specific employment or activity that formed the basis of his or her admission or grant of status in the United States." In support of the proposed rule, DHS cites an administrative burden on adjudicating officers associated with determining whether the grace period applies and whether it should be shortened or eliminated in individual cases.

If enacted as proposed, the proposed rule would require affected nonimmigrants to depart the United States upon cessation of the employment or other activity on which their status is based, unless otherwise authorized to remain in the country.

What this means

Foreign nationals in the impacted classifications would face a significantly shorter timeframe to address the immigration consequences of employment termination. Particularly, the rule, if finalized as proposed, would mean:

- **Immediate departure:** Workers who no longer maintain the employment or activity underlying their nonimmigrant status would be required to depart the US immediately, unless they had alternative authorization to remain, such as an already pending I-485 Application to Adjust Status or a petition to change employers or application to change status filed prior to cessation of employment.
- **Dependents:** The proposed elimination of the grace period would also apply to dependents of the affected principal nonimmigrants.
- **Compelling circumstances EAD:** Affected workers with approved I-140 petitions would no longer be able to apply for a compelling circumstances employment authorization document (EAD) during the 60-day period following a job loss.

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- **Employer considerations:** Employers who sponsor foreign workers in the affected nonimmigrant classifications will need to conduct additional due diligence to verify whether candidates are eligible for sponsorship and consider other implications of separation.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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