

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.

- **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.

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

Follow us on X @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. EY member firms do not practice law where not permitted by local law or regulation. Ernst & Young LLP (US) does not practice law or offer legal advice. For more information, please visit EYLaw.ca.

About Mehlman Jacobs LLP

Mehlman Jacobs LLP specializes in immigration law and provides legal and strategic advice to employers and their employees on all stages in the immigration process. Providing boutique, customized experience, the firm aims to provide transparency to an often complex and uncertain environment. Mehlman Jacobs, a California Limited Liability Partnership, limited to the practice of immigration law, is a member of Ernst & Young Global Limited and is independently owned and operated by US licensed lawyers.

© 2026 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 114687-26-GBL

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact us or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

EY Law LLP

Batia Stein, Partner

+1 416 943 3593

batia.j.stein@ca.ey.com

Marwah Serag, Partner

+1 416 943 2944

marwah.serag@ca.ey.com

Melanie Bradshaw, Partner

+1 416 943 5411

melanie.bradshaw@ca.ey.com

Mehlman Jacobs LLP

Sharon Mehlman, Partner

+1 858 404 9350

sharon.mehlman@mehlmanjacobs.com

Dilnaz A. Saleem, Partner

+1 713 750 1068

dilnaz.saleem@mehlmanjacobs.com

Author: Ananya Dhar Choudhury

+1 416 943 2055

ananya.dhar.choudhury@ca.ey.com

Roxanne Israel, Partner

+1 403 206 5086

roxanne.n.israel@ca.ey.com

Sheila Snyder, Partner

+1 604 899 3515

sheila.snyder@ca.ey.com

Stephanie Lipstein, Partner

+1 514 879 2725

stephanie.lipstein@ca.ey.com