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Navigating Job Loss on a Work Visa: Options for Foreign Workers Facing Termination in the U.S.

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For H-1B Visa Holders

1. Understand the 60-Day Grace Period

The 60-day grace period for H-1B visa holders begins on the last day worked, not the final day of severance pay. USCIS does not consider paid, non-working time as maintaining valid H-1B status.

2. Take Action by Day 45 if Possible

To maintain lawful status, a new employer must file an H-1B transfer petition within the grace period. Because obtaining a Labor Condition Application (LCA) from the Department of Labor can take at least seven days, it's essential to initiate the transfer process by Day 45.

If new employment is not secured by then, consider filing for a Change of Status to B-2 (tourist visa) to remain legally in the U.S. while wrapping up personal matters or continuing your job search.

3. EB-5 Investment as an Option

If financially feasible, the EB-5 Investor Visa offers a path forward. An investment of \$800,000 allows concurrent filing for Adjustment of Status. Within 6–8 months, you may obtain a work permit not tied to a specific employer, and green cards for you and qualifying family members may be granted within 24–36 months.

4. Re-Enroll as a Student with Caution

Pursuing studies under an F-1 visa may be a viable option. However, be cautious with "Day One CPT" programs, as USCIS has previously targeted fraudulent CPT setups—including establishing fake universities to catch violators. Always ensure the legitimacy of the educational institution.

5. Consider Multiple Change of Status Strategies

You may file to change status from H-1B to H-4 if your spouse holds a valid H-1B. If you later find a new job, it's possible to switch back to H-1B status—though this may require international travel for visa stamping. Consult an attorney before proceeding.

For L-1 Visa Holders

L-1 holders are also eligible for a 60-day grace period following termination. However, because L-1 status is employer-specific, transferring to another employer is generally not permitted unless you can demonstrate employment with a foreign affiliate for at least one of the past three years.



Impact on PERM and Labor Certification

If your employment ended during the PERM or Labor Certification process, you will likely need to begin again. The Department of Labor rarely approves PERM applications from companies undergoing layoffs.

Even individuals still employed—especially those in their fifth year of H-1B status with a pending labor certification—should proactively explore contingency plans.

Visa matters are nuanced and deeply personal. While these guidelines provide a foundation, personalized legal counsel is indispensable. For tailored advice, feel free to contact me or any member of the Buchalter Immigration Team—we're here to support you through the evolving immigration landscape.



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