

## Guidance for Immigration-Related Gaps in Work Authorization

*Created for CU Denver Business Partners by Human Resources, International Student & Scholar Services, and University Counsel*

If you have an international employee with a gap in their work authorization because they are waiting for a petition or application to be approved or a document to arrive, you have two options:

- 1) Terminate the employment; or
- 2) Place the individual on temporary Leave Without Pay (LWOP).

You will find the CU policy governing LWOP here - <https://www.cu.edu/employee-services/leave-policies>.

There are several factors to consider in making this decision:

- Compliance with the Colorado Equal Pay for Equal Work Act does not allow a terminated employee to be “reappointed” into a previous role without a search.
- It is taking 100 days on average to fill a role at the University of Colorado Denver.
- You may utilize Leave Without Pay for an immigration-related reason (e.g., waiting for an Employment Authorization Document to arrive or for an H-1B to be approved following a change of status) for up to 90 days.
- Employees must have work authorization to use vacation time, which means that Leave Without Pay for an immigration reason is strictly limited to the 90-day period provided and cannot be extended by utilizing any vacation time that the employee may have accrued.
- During periods of leave without pay for an immigration-related reason, employees will not accrue vacation and sick leave.
- The Hiring Unit continues to be financially responsible for the employer’s portion of the employee’s benefits plan while an employee is on Leave Without Pay.

To utilize the Leave Without Pay (LWOP) option, please visit this website:

<https://www.cu.edu/docs/facultyuniversity-staff-leave-without-pay-fact-sheet-form>

You’ll find a comprehensive fact sheet and the form that Faculty and University Staff will need to fill out as a downloadable PDFs.

You must include the business need for taking this action in your LWOP request. Reasons might include the following:

- The employee has a unique skill set that would be difficult to find elsewhere.
- The employee performs a critical function that couldn’t be performed by anyone else at the institution without significant training.
- Backfilling the position would require more time than waiting for the document to arrive.

Let [HR.I-9@ucdenver.edu](mailto:HR.I-9@ucdenver.edu) know if you plan to use LWOP for an international employee with a gap in their work authorization, and of any other updates concerning your employee’s work authorization. **You must send updated documentation to [HR.I-9@ucdenver.edu](mailto:HR.I-9@ucdenver.edu) before taking the employee off of LWOP.**