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WHAT TO DO WHEN AN H-1B SCHOLAR DEPARTS EARLY

I. Defining “Early Departure”

“Early Departure” refers to a situation where an employer terminates an H-1B employee or that employee chooses to leave the University before his or her current status ends. For example, if an H-1B employee whose H-1B ends on June 30, 2020 accepts a position at another university and ends his or her employment relationship with UCD effective April 30, 2020, s/he would be taking an “early departure.”

II. Employer’s Obligations in the Case of an Early Departure

Here’s what the relevant federal regulations say about the employer’s obligations in the case of an early departure:

“.....If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.” 8 CFR 214.2(h)(11)(i)(A). Moreover, if the employer dismisses the H-1B worker for any reason, prior to the end of the period of authorized employment, the employer must pay the reasonable costs of return transportation to the alien's home or last place of foreign residence. 214.2(h)(4)(iii)(E). Furthermore, the employer must pay the H-1B employee the required wage during the validity period of the LCA. Therefore, the employer must withdraw any remaining valid LCA filed on behalf of an employee whose employment is terminated. 20 CFR 655.750(b)(2).

To summarize, when an H-1B employee is terminated by the University, the University must do the following:

- Notify USCIS that the employment relationship has ended, so that the USCIS may revoke the H-1B petition approved on behalf of the terminated employee.
- Withdraw any still valid Labor Condition Application (LCA) filed by the employer on behalf of the terminated employee.
- Offer the employee reasonable costs of transportation home if the termination occurs prior to the end of the employee’s authorized stay. This does not include relocating family members or property.

When an H-1B employee is the one who decides to end the employment relationship, the University is still obligated to notify USCIS of that fact and withdraw any valid LCA filed on behalf of that employee. The University is not, however, responsible for any transportation costs.

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(Continued)

III. The Role of the Department Administrator

A. You've Just Got to Let ISSS Know ...Will the Scholar Stay or Will S/he Go?

We ask that you inform us, as soon as possible, of the departure of any H-1B employee. We need to know regardless of whether the employee is being terminated or is leaving of his/her own volition. You can do this by completing our [H-1B Departure Form](#)

The Early Departure Form asks for the following:

- 1) Department Contact's name and Department/Division;
- 2) Scholar's Name;
- 3) Date of Departure; and
- 4) Reason for Leaving and the Scholar's Forwarding Address, if known.

This information gives ISSS what it needs to withdraw the LCA and notify USCIS in compliance with the regulations.

B. Consequences of a Failure to Communicate

Even if the Department Contact fails to inform ISSS of the departure, the HR information system will eventually show the Scholar as "terminated" and the I-9 Specialist in Human Resources will contact ISSS about the Scholar's status. At that point, one of the International Scholar Advisors will call the Department Contact to verify that the H-1B employee in question has left the University.

This delay is far from ideal, and could result in unnecessary and unwanted financial liability for the hiring unit. The Immigration and Nationality Act provides that: "An employer is responsible for paying the required wage to the H-1B employee at all times during the LCA validity period and as specified on the LCA and Form I-129." I.N.A. § 212(n)(2)(C)(vii)(I)-(III). What this means is that until the LCA has been withdrawn, the hiring unit is still technically responsible for paying the H-1B employee.

VI. ISSS' Role

In recognition of the potentially serious consequences of failing to take timely and appropriate action when a Scholar departs early, ISSS commits to processing Early Departure Forms received from the Departments/Divisions within 48 hours of receipt.

We withdraw active H-1B petitions by sending a letter by certified mail explaining the circumstances of the early departure to USCIS and requesting that the petition be withdrawn. We withdraw an active LCA by going to the appropriate website and indicating that the LCA be immediately withdrawn.