Anschutz

# Guidance for Immigration-Related Gaps in Work Authorization

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

If you have an employee on work authorization with a gap in their 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).

Ensuring that all work-authorization guidance is followed is in the best interest of both the employee and the University. Maintaining continuous compliance helps protect the employee's ability to obtain or extend future immigration status, while also reducing legal and operational risks for the University.

In many cases, it would be beneficial to also discuss with the employee which option would be preferred or more sustainable for them.

## Option 1: Terminate Employment

- Contact your Employee Relations Consultant as soon as possible to develop the exit plan. Also, let HR.I-9@cuanschutz.edu know if you plan to terminate the appointment.
- The employee may be offered the option to resign.
- They would be eligible to rehire when they become fully authorized to work. 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 posting process.
- Eligible accrued leave would be paid out (if applicable).
- The standard exit process would apply.

## Option 2: Leave Without Pay

If there is a reasonable expectation that renewal will be granted soon, Leave Without Pay is an option. Key considerations:

- No work may be performed, and the employee may not receive any renumeration (e.g., compensation, paid benefits, paid leave) from CU during this time.
- Retirement contributions are based on a percentage of salary. While on LWOP, contributions will cease; however, contributions will continue once you return to work in a benefits-eligible position.
- LWOP time does not count toward PERA service credit. Employees on PERA must also submit the PERA Leave Without Pay form to PERA within 90 days.

- During periods of leave without pay for an immigration-related reason, employees will not accrue vacation and sick leave.
- There is no mechanism to pay out leave while an employee is on LWOP.
- If renewal is not received within 90 days, employment should be terminated. The employee may elect to resign.
- The employee may not "volunteer" time nor perform work in any manner for the University during this time period.
- Let HR.I-9@cuanschutz.edu and your Employee Relations Consultant know if you plan to place an employee on Leave Without Pay due to gap in work authorization.

**LWOP Process:**

1. The individual should be placed on unpaid leave in HCM. This is done through a Template Based Transaction (TBT). This can be done by placing them on a "Leave of Absence" and using reason code "Administrative leave."
    a. Reduce the percent of time to 0.49 FTE so benefits pause.
    b. You must include the business need for taking this action in your LWOP request. Reasons might include the following:
        i. The employee has a unique skill set that would be difficult to find elsewhere.
        ii. The employee performs a critical function that couldn't be performed by anyone else at the institution without significant training.
        iii. Backfilling the position would require more time than waiting for the document to arrive.
2. The employee must complete the Leave Without Pay (LWOP) Form and submit to Employee Services within 31 days from being placed on or returning from leave. There are two options for benefits during this time frame.
    a. Form: Leave Without Pay Form
        i. Option 1: Employee elects to suspend benefits. The department and the employee will not be responsible for premiums during this time.
        ii. Option 2: The employee suspends benefits and employee is also reduced below 0.50 FTE in HCM. This will trigger COBRA and allow for a benefits option during this time in which employee pays full premium.

**Returning from LWOP:**

1. Valid work authorization documents must be verified through the I-9 process prior to returning to work. Updated documents should be sent to hr.i-

9@cuanshcutz.edu.

2. The employee must complete the Leave Without Pay (LWOP) Form and return it to Employee Services 31 days from if/when they return from Leave Without Pay to reinstate benefits.
3. PERA employees should contact PERA regarding returning from LWOP.
4. If the employee's FTE was reduced for benefits purposes, ensure it is updated in HCM.