The Department of Homeland Security has signaled interest in rolling back or eliminating the current 60 day grace period that many H 1B workers rely on after a job ends. This is not a small procedural tweak. It changes the risk profile of layoffs, resignations, corporate restructures, and even ordinary job transitions for H 1B professionals and their families.

What the 60 day H 1B grace period is

Under current DHS regulations, certain nonimmigrants including H 1B workers may be granted a grace period of up to 60 consecutive days, or until the end of the authorized validity period, whichever is shorter, following the cessation of employment. The key points are often missed:

- It is discretionary. The regulation allows it, it does not guarantee it in every situation.
- It is limited to 60 consecutive days.
- It cannot extend beyond the I 94 expiration date.
- It is tied to a "cessation of employment" event. If employment ends, the grace period may apply. If employment never began, or the underlying status issue is different, it may not help.

In real life, this has been used most commonly for portability filings, meaning a new employer files an H 1B petition requesting extension of stay, and the worker begins work upon USCIS receipt, assuming eligibility is met.

How the grace period is used in practice

The grace period has become part of standard risk management for employers and H 1B employees, especially in industries where layoffs and rapid job changes are common. Typical uses include:

- H 1B change of employer after termination
- Switching to another status
- Preparing for departure without immediate overstay exposure
- Addressing administrative issues

What it could mean if DHS ends the grace period

If DHS ends the 60 day grace period, the most immediate consequence is that the last day of employment becomes much more consequential. With no regulatory cushion, a termination can place someone out of status right away, or at least remove the argument that a period of authorized stay continued after the job ended.

That shift has a few practical consequences.

Timing becomes the entire case

Without a grace period, a change of employer petition would need to be filed so that the individual remains in lawful status at the time of filing and, for extension of stay requests, at the time of adjudication. A same week filing might not be enough if the last day of employment has already passed and there is no authorized stay to bridge the gap.

More consular processing, less extension of stay

If maintaining an in country extension of stay becomes difficult after termination, employers may be forced into consular processing strategies. That means leaving the United States, obtaining a visa stamp if needed, then reentering in H 1B status based on the approved petition.

That approach can work. But it is slower, costlier, and more fragile. It adds travel risk, visa appointment backlogs, administrative processing delays, and potential interruptions for projects and payroll.

Higher risk for dependents

H 4 dependents are tied to the H 1B principal's status. If the principal loses status immediately after termination, dependents may lose status immediately too. This becomes especially serious where an H 4 spouse has an EAD or where children are nearing age 21 and timing is already tight.

Increased exposure in layoffs and restructures

A layoff scenario often involves dozens or hundreds of workers. If there is no grace period, there is far less opportunity to coordinate orderly transitions. Companies and individuals will need to plan earlier, and in some cases, file protective petitions earlier.

More focus on the precise last day of employment

When the grace period exists, disagreements about whether the last day was Friday or the following Monday may not be case determinative. Without a grace period, those facts can become central. Written termination notices, payroll records, and access revocation dates could all become evidence in future filings. This highlights the importance of understanding an employer's obligations when terminating a non-citizen employee, as these factors could significantly impact the outcome of such cases.

What is not changing, even if the grace period ends

Even if DHS ends the grace period, a few foundational rules remain.

- The H 1B portability provisions are still law. The ability to start with a new employer upon USCIS receipt generally remains available when the filing is made while in valid H 1B status and other conditions are met.

- The I 94 expiration date still controls the outer boundary of authorized stay based on admission. Even with a grace period, an I 94 ending soon has always been a hard stop.
- Employers still must file an H 1B petition with a certified LCA and must comply with wage and worksite rules. Ending the grace period does not relax compliance. It increases the penalty for delay.

Risk reduction steps that matter now

If DHS moves forward, the details will matter, including effective dates, transition provisions, and how USCIS handles filings that are in progress. But there are steps that reduce risk regardless of exactly how the policy is implemented.

Track I 94 validity and passport expiration proactively

Many status problems start with an I 94 that expires earlier than expected, often due to passport expiration. Maintaining a long I 94 validity does not solve termination issues, but it preserves flexibility for filings and travel.

Keep evidence of maintenance of status organized

Paystubs, W 2s, offer letters, prior approval notices, I 94 records, and work location documentation all become important when filings must happen quickly. If timing becomes tighter, clean documentation can be the difference between a straightforward approval and a request for evidence, or worse.

Prepare for rapid petition filing

Where there is a realistic possibility of termination or a planned transition, it can be helpful to have a plan for how quickly a new employer can file:

- how fast the LCA can be certified
- what supporting documents are ready
- whether premium processing is available and appropriate
- whether an in house team or outside counsel can move within days

Consider travel and consular processing strategy early, not as a last resort

If extension of stay filings become riskier after a termination, consular processing becomes more common. That requires planning for visa stamping location, appointment availability, and potential administrative processing. It also requires understanding whether the individual needs a new visa stamp to return, and what happens if the stamp is delayed.

Avoid “wait and see” gaps

A common pattern in job loss situations is waiting for a final offer letter, waiting for internal approvals, waiting for a start date. If the grace period is eliminated, waiting may create an unfixable gap. The legal strategy often shifts toward filing as soon as eligibility exists, then amending later if needed.

What to expect next

DHS cannot simply wish away a regulation without process. Ending the grace period would typically require formal rulemaking, with a proposed rule, a comment period, and a final rule with an effective date. There may also be litigation risk and operational constraints that shape how quickly any change can be implemented.

But it is a mistake to assume nothing will happen. Even the possibility of removal changes how employers plan layoffs and how quickly filings need to be prepared.

Bottom line

The 60 day H 1B grace period has functioned as a practical bridge between jobs, statuses, and travel plans. If DHS ends it, job loss becomes a same day immigration problem, not a next month immigration problem. The lawful options do not disappear, but they become narrower, faster, and less forgiving.

The best protection is planning that assumes tighter timelines: accurate I 94 tracking, organized documentation, rapid filing capability, and a realistic consular processing fallback when an in country extension of stay is not viable.