

IMMIGRATION WEBINAR

HOSTED BY ZJANTELE CAMMISA MARKEL
OWNER OF CAMMISA MARKEL PLLC



A GUIDE FOR EXPATS IMPACTED BY COVID-19

General Definitions

I-94

- Granted upon entry to the USA.
- Sets the time which entrants may remain in the USA.
- This exit date is what will control your status within the USA.
- You can retrieve your I-94 online [at this website](#).

Visa Stamp

This is the visa sticker in your passport. While your visa date is valid then you can enter the USA.

LCA

All E3 and H1-B Visas require an LCA – the LCA expiry date dictates the period in which you are authorized to work for your employer pursuant to your visa.

It is important to always **remember your I-94 trumps everything else**: your visa end date, your LCA end date, and your 60-day grace period. You must always leave (or file an extension of stay or change of status) by your I-94 end date, regardless of the end dates of those other documents. I cannot stress this enough.

If you are still in the US and your visa is expiring, or you need to apply for a new visa and/or your appointment got cancelled.

Renewing your E3 or other Visa status with the same employer

If you are in the US, you can renew your E3 or other visa status (H1-B, O1, L1, TN, E1, E2) from within the US by filing an extension petition with USCIS. You will automatically be granted a continuation of authorized employment for a period of up to 240 days. You can continue working for your employer even after your visa or status expires and before the approval of the extension is received (as long as this is within 240 days).

Change to a new employer

If you are anything other than H1-B status (E3, O1, TN), you can file a change of employer petition within the US, but unfortunately you are NOT allowed to start working for the new employer until the petition is approved (approx. 2.5 – 4 months wait). If you are in H1-B status, you will be able to start working with a new employer as soon as your change of employer petition is filed with USCIS (you do not need to wait for the approval).

Next time you Travel Internationally

If you filed your petition within the US, as soon as you travel internationally you will need to visit a consulate for your E3 Visa sticker to be put in your passport in order to reenter the US.

If your I-94 expires long after your E-3 visa and LCA expiry date – does this allow you to stay and continue working?

The I-94 expiry date for E3 visa holders should match the LCA end date attached to that visa.

You are only authorized to work on your E3 in the US as long as your I-94 and LCA are valid. This means that, in a situation where your I-94 exceeds your LCA, your authorization to work ends when your LCA expires.

If you are getting terminated or laid off. What are your options?

Check expiry dates on:

- Visa
- I-94
- LCA

If you have **more than 60 days** remaining on your I-94 from the date that you stop working, you will have access to a full 60-day grace period to remain in the US (except for J1). Within that 60-day period, you can apply for a visa with a new employer (either by filing with USCIS in the US or by traveling abroad when travel restrictions are lifted).

If you do not pursue one of these options, then you must leave the US by the end date of your 60-day grace period.

If your I-94 expires **before 60 days**, then you must leave the US (or file an application for extension of stay or change of status with USCIS) by your **I-94 end date**.

Ways to stay in the US if your employment has been terminated

- Get rehired by your same employer within 60 days;
- Get hired by a new employer within 60 days and file a change of employer petition or leave to consular process by the 60th day;
- File a change of status to tourist status with USCIS by the 60th day. This allows you to request up to an additional 6 month stay in the US as a tourist. Note that you **cannot work**, and you **cannot leave and re-enter** the US during this period; or
- If you have a spouse there is the option of filing for dependent status of your spouse.

Can your employer pause your pay (furlough), reduce your pay, or can you take unpaid leave?

Employer Pausing Pay

Pause in pay (or furlough) is **not allowed** under the E3 or H1-B visa categories because employers are obligated to pay the wage specified on the LCA.

Employer Reducing Pay Or Changing Employment to Part time

Pay rate can be reduced, but not below the prevailing wage rate on the LCA. This does not require a new Petition filing.

Change from Full Time to Part Time for E-3 and H-1B only by filing a new visa application or petition with USCIS. For an H-1B employee, the employer can start paying the part-time salary rate as soon as the petition is filed, however, for an E3 visa holder the employer cannot pay the new salary rate until the petition is approved (2.5-4 months).

Unpaid Leave

Your employer **cannot** request you to take unpaid leave.

There are certain circumstances when unpaid leave is allowed but only when it is at your request. For example:

- maternity leave;
- an accident;
- to take unpaid leave after your paid leave to extend a holiday, pursuant to company policy.

What are alternatives to unpaid leave?

Your employer could terminate you and then rehire you 60 days later.

If your employer cannot rehire you, then before you come to the end of your 60-day grace period (or I-94 end date, whichever is sooner), you can apply to change status to B2 status from within the US. This will allow you to remain up to an additional 6 months as a tourist in the US, however, as a tourist you are not allowed to get paid.

During this additional time (up to 8 months of unpaid time in the US) your employer can decide to rehire you, or you can find employment with a new employer. Before you start to work for your previous employer again, or a new employer, you will need to reactivate an unexpired E3 with the previous E3 employer or apply for a new E3 with the new employer.

Can you apply for Unemployment Insurance (UI)?

Typically, as an E3 (or other visa) employee if you apply for UI, you are confirming you are unemployed. Once unemployed, or not working, you are no longer maintaining E3 status. The maximum amount of time you can no longer be working is 60 days. Effectively you could try to apply for a 60 day period, however if it is later deemed you were not qualified you could be asked to pay it back.

Applying for UI is only a real consideration if you already hold a green card or an Employment Authorization Document (EAD). If you are the dependent spouse on an EAD, and you lose your job but your spouse has their job, you are eligible for UI.

UI payments are generally not considered as public benefits by DHS for the purpose of making a public charge determination because these are benefits earned through specific employment and tax deductions therefore receiving UI payments will not negatively affect an application for extension of non-immigrant status, green card or citizenship.

CARES Act and the Public Charge Rule - The Public Charge Rule excludes disaster assistance from the type of public benefits that will be considered in making a public charge determination. It is unclear at this point if the CARES Act will be considered as disaster assistance.

Disclaimer

This information alert is to provide guidance on options that are available during this difficult time of COVID- 19. It is by no means intended to be used as legal advice for your particular situation. Every individual's situation is different. If you would like our firm's legal advice and a strategy particular to your situation, please reach out to us by email.

We are here to assist you, to hold your hand (figuratively, in-line with social distancing) and create a personalized plan for you, whatever your situation might be. We are here to take away, or at least minimize, your anxiety by providing you with a plan of action specifically tailored to your situation, taking into account your needs and desires regarding your future in the US.

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