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The ASAP describes an important recent decision by the Department of Labor, which details how an employer's decision to terminate an H-1B worker must be handled under immigration regulations in order to cut off front pay obligations.

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Global Edition

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specifically for the Global Industry

DOL Clarifies Requirements for “*Bona Fide*” Termination of H-1B Visa Holders

On September 29, 2006, the Administrative Review Board (ARB) of the Department of Labor (DOL) promulgated a decision (*Amtel Group of Florida v. Yongmahapakorn*, 04-087 (ARB 9/29/06)(for complete text click here)) that creates administrative prerequisites for ending the salary obligation to H-1B employees whose employment terminates.

The employer terminated the employment of an H-1B employee but never informed USCIS. Subsequently, the employee filed a complaint with DOL seeking, among other things, back wages. The ARB held that a “*bona fide*” termination is effected for H-1B purposes only when the employer notifies USCIS of the termination. In cases where the employer terminates the employment relationship before the H-1B expires, either with or without cause, the employer must also offer transportation costs for the employee's return to his or her home country to effect a *bona fide* termination. The ARB awarded seventeen months of back pay for the period between the termination of the employment and the expiration of the H-1B since the termination had not been *bona fide*.

This decision raises administrative issues such as whether a reasonable period exists to notify USCIS without incurring back pay liability during that period, and, if not, whether liability terminates upon mailing the notice to USCIS or only upon USCIS's receipt of it.

Littler Global will assist you in analyzing your processes for the termination of H-1B employees and balancing any conflict between internal administrative timelines and potential extension of salary obligations.