

**Gene T. Schaeffer**

608.284.2655

gschaeffer@gklaw.com

**Mónica Santa María**

608.284.2624

msantamaria@gklaw.com

Back pay award reinforces importance of notifying USCIS upon H-1B worker termination or resignation

An administrative law judge (ALJ) recently upheld a Wage and Hour Division complaint against an employer who failed to notify U.S. Citizenship & Immigration Services (USCIS) that it had terminated an H-1B worker. Significantly, the ALJ found that although the termination had occurred in 2008, the wage and hour complaint was timely filed in 2010. Wage complaints must be brought by an employee to the United States Department of Labor (DOL) within one year of the alleged wrongful behavior. The ALJ found that the failure to meet the H-1B wage promises is a continuing violation and thus, so long as the employee contacts DOL within one year of the last date on which the employer failed to meet its H-1B wage promises, the complaint is timely.

The employer, ME Global, Inc., was ordered to pay \$182,943 in back wages. The ALJ found that while the termination definitely occurred in November 2008, the employer failed to effect a bona fide termination under immigration regulations by not providing notice of the terminated employment relationship to USCIS. The ALJ rejected the employer's argument that a bona fide termination under other employment law principles sufficed. Instead, the ALJ determined that because the employer had not notified USCIS, the employer had merely "benched" the employee rather than terminated him under the regulations governing the H-1B program. As a result, the employer was liable for back wages. The case is *In the Matter of: Administrator, Wage and Hour Division v. ME Global Inc.*, 2013-LCA-00039.

If you have any questions about the case ruling and how it may affect your business or employees, please contact Gene Schaeffer at 608.284.2655 or gschaeffer@gklaw.com; or Monica Santa Maria at 608.284.2624 or msantamaria@gklaw.com.

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