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H-1Bs Fear They'll Be Sent Home

[Carrie Kirby, Chronicle Staff Writer](#)

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CHRONICLE SECTIONS

Fear and insecurity is palpable among Silicon Valley's H-1B workforce, a group of foreign nationals who have flocked to work in the region's technology industry.

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On Internet message boards about immigration, at the Sunnyvale Hindu Temple and at other gathering places for this mostly Indian and growing community, one question dominates: "What will happen to me if I get laid off?"

The answer is unclear.

For years now, the H-1B program has been a lightning rod for homegrown workers who complain the visas are being used to suppress wages by bringing in foreign workers to compete with them. The tech industry, on the other hand, maintains that it faces desperate shortages in certain skill areas that it can only fill from abroad.

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While that debate rages in Congress, among other places, H-1B workers in the Bay Area have more pressing concerns, like keeping their jobs and staying in this country.

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Losing a job is a gut-wrenching experience for anyone with bills to pay. But for H-1B workers, it can be terrifying because their right to stay in this country is tied to their work status. Many visa holders are confused over whether they must leave the country the day they lose a job or if they can stay and look for new employment -- and if so, for how long.

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INS policy on the subject has been clear as mud. Various immigration attorneys interpret INS rules to mean that workers have anywhere from zero to 30 days to get re-employed, switch to a different kind of visa or leave the country.

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That last option is the one causing jitters, even among workers whose employers are starting to talk about cutbacks.

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"If you have to go back to your country, what do you do with your apartment?" said a software engineer from South America, who did not want to give his name. "You don't have time to sell your car. What do you do with your debts? Leave the country and not pay them? That is not right."

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But so far, few laid off workers have left the country. In response to the widespread fear, the INS recently clarified

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its policy, explaining that H-1B visa holders do not become illegal immigrants after losing a job -- not even if they stay unemployed for weeks or months.

When the employer reports to INS that the worker has been fired, INS will revoke the visa, said INS spokeswoman Eyleen Schmidt. But the revocation process takes several months, and the visa holder would get multiple warnings and the chance to appeal before it actually happens, Schmidt said.

"Don't panic," she said. "Until you're told differently, you're OK."

Well, sort of OK. There's another problem: Visa holders who aren't working are "out of status," an INS classification in which the visa holder can't receive any services from the agency. That means if the worker does get a new job, the INS won't transfer the visa.

But there's a loophole for that problem too, Schmidt said: On a case-by-case basis, local INS adjudicators can agree to transfer the visa to the new employer "if there's extraordinary circumstances surrounding losing your status -- in this case the H-1B (holder) being terminated from their job."

When Schmidt told Wired News about the loophole last week, the San Francisco tech Web site reported that the INS had decided to be lenient with laid-off H-1B workers. The news was hailed as a godsend in the H-1B community.

But Schmidt now says the Wired reporter misinterpreted her statements, and that workers who claim extraordinary circumstances are taking a risk.

"It's hard to say what any individual adjudicator is going to do," Schmidt said, adding, "Obviously we're all human, and we understand that it's very turbulent out there in the tech sector."

Immigration attorney Greg Siskind advised that H-1B workers not hang their hopes on the "extraordinary circumstances" loophole.

"That's the last thing I would tell clients to do, to depend on something an INS official says in an article. They can't control what INS offices do all over the nation. Clients should do as much as they can to maintain their status," said Siskind, whose Cordova, Tenn., law firm has a San Jose office. Usually that means switching to another type of visa while looking for a job.

When H-1B holder Shalini Seth lost her software engineering job, she played it safe by officially becoming a dependent of her husband, who also has an H-1B visa.

But even though she knows she's not facing imminent deportation to India, Seth, who lives in Fremont, is far from relaxed as she hunts for a new job. Her biggest worry is that her husband will also become unemployed and the couple will not be able to stay in the United States.

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"We bought a house here and everything," Seth said. "I'm actually looking for a job really hard. We need the security at this point."

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