

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS



Many employers are concerned about liability issues related to the employment of international students in the United States due to changes in federal laws governing non-citizens. This brochure addresses concerns employers might have about international students and employment.

Getting permission for international students to work in the U.S. is not as difficult as many employers think. Most international students are in the U.S. on non-immigrant student visas (F- 1 and J -1), and these international students are eligible to accept employment under certain conditions.

Practical Training for F-1 Students

Practical training is a legal means by which F-1 students can obtain employment in areas related to their academic field of study. Students, in general, must have completed one academic year (approximately nine months) in F-1 status and must maintain their F-1 status to be eligible for practical training. There are two types of practical training:

1. Optional Practical Training
2. Curricular Practical Training

Optional Practical Training (OPT) must be authorized by the U.S. Citizenship and Immigration Services (USCIS) based on a recommendation from the designated school official (DSO) at the school which issued the I-20 to the student. Form I-20 is a government document which verifies the student's admission to that institution. Students are eligible for 12 months of OPT for each degree level. Students who obtain a degree in Science, Technology, Engineering, and Mathematics (STEM) may be eligible for an additional 24 months of OPT.

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS



Pre-Completion OPT can be used by F-1 students prior to the completion of their studies. Students can request to work:

- part-time, a maximum of 20 hours per week, while school is in session
- full-time during vacation when school is not in session or
- full-time/part-time after completing all course requirements for the degree excluding thesis or equivalent.

Post-Completion OPT can be authorized for full time employment after completion of the course of study.

STEM OPT Extension can be authorized for an additional 24 months if student

- is currently on post-completion OPT
- has completed all course requirements (excluding thesis or equivalent) for a bachelor's, master's or doctoral degree in Science, Technology, Engineering, and Mathematics (STEM)
- has a job or job offer (must be at least 20 hours per week) from an employer registered in USCIS E-verify Program

Employer responsibilities for STEM

- Report to Designated School Officials (DSO) within 5 business days if the student has been terminated from, or otherwise leaves employment prior to the end of the authorized period of OPT.

- Participate in the E-verify program

- Have a Federal Employer Identification Number

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS



Agree to the terms of STEM OPT by completing their sections of the Training Plan (I-983)

Cap-Gap OPT can be granted if student (1) is in a period of authorized post-completion OPT, and (2) is the beneficiary of a timely-filed H-1B petition requesting change of status and an employment start date of October 1 of the following fiscal year. The Cap-Gap OPT is an automatic extension of duration of status and employment authorization to bridge the gap between the OPT and start of H-1B status. The automatic extension of OPT is terminated upon the rejection, denial, or revocation of the H-1B petition.

Employment Authorization Document (EAD): Students who have received OPT permission will be issued an EAD by the USCIS. Their name, photo and valid dates of employment are printed on the EAD. Employers should note that the average processing time for USCIS to issue the EAD is two or three months, and students may begin employment only after they receive the EAD which will indicate the start and end dates of employment. Students who have a pending STEM extension application can continue working for up to 180 days while the application is pending. Curricular Practical Training (CPT) may be authorized by the institution (NOT by USCIS) for F-1 students participating in curricular-related employment such as cooperative education, work study, practicum and internship programs.

Authorization is indicated on page 2 of the I-20 and includes the name of the company, start and end dates, and signature of the designated school official (DSO). Since each institution has different policies related to curricular-related employment, students should speak to the DSO at their institution. Processing time for the authorization of CPT varies at each institution, and students may begin employment only after they

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS



receive the CPT work authorization on their I- 20. International students on F-1 visas are eligible for both CPT before finishing their studies, as well as 12 months of OPT. However, students who work full- time on CPT for one year or more are not eligible for OPT.

Academic Training for J-1 Students

International students on J-1 visas are eligible for up to 18 months of work authorization, called academic training. Post-doctoral students may apply for an additional 18 months of Academic Training. Some J-1 program participants are also allowed to work part-time during the academic program. Students should consult with the Responsible Officer (RO) or Alternate Responsible Officer (ARO) at their institution.

Minimal Paperwork for the Employer

Fortunately, there is little paperwork for an employer who hires F-1 or J-1 students. All paperwork is handled by the students, the school, and USCIS (for OPT).

Continuing Employment after the Practical/Academic Training Period

Federal regulations require that students terminate their employment at the conclusion of the authorized practical or academic training. However, students on an F-1 visa, or students on a J- 1 visa who are not subject to a two-year home residency requirement, may continue to be employed, if they receive approval for a change in visa category-usually to an H-1B. Students must have a minimum of a bachelor's degree in order to qualify for H-1B status.

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS



Individuals may work in the U.S. for a maximum of six years under an H-1B visa. This visa is valid only for employment with the company that petitioned for them. They must re-apply to the USCIS if they wish to change employers. As soon as the initial job offer is made, they should petition for an H-1B visa if employment is likely to extend beyond the practical training period.

What about Taxes?

Unless exempt due to a tax treaty, F-1 and J-1 students earning income while working on practical training are subject to applicable federal, state, and local income taxes. Information on tax treaties may be found in Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens, and 901, U.S. Tax Treaties.

Generally, F-1 and J-1 students are exempt from Social Security and Medicare tax requirements. However, if F-1 and J-1 students are considered "resident aliens" for income tax purposes, Social Security and Medicare taxes should be withheld. Chapter 1 of Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens explains how to determine the residency status of international students. More information on Social Security and Medicare taxes can be found in Chapter 8 of Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens and in Section 940 of Social Security Administration Publication No. 65-008, Social Security Handbook.

For your reference:

The Code of Federal Regulations (CFR) Title 8 and Title 22 citation numbers for regulations governing practical training are as follows:

F-1 students: 8CFR 214.2 (f)(9)&(10) & 8 CFR 214.16

J-1 students: 22CFR 62.23 (f)

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CFR Title 8 citations governing IRCA requirements are:

F-1 students: 8CFR 274a.12(b)(6)(iii) and 8CFR 274a.12(c)(3)(i)

J-1 students: 8CFR 274a.12(b)(11)

Additional Resources

Code of Federal Regulations

SEVP Policy Guidance on OPT (Please note that the 2016 final rule effective May 10, 2016 reformulated the STEM OPT benefits and its length).

[For STEM OPT:](#)

[STEM OPT Reporting Requirements for Students, Employers, and DSO](#)

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