

You Down with OPT? DHS Proposes Longer Post-Graduate Work Authorization for STEM Graduates, with a Catch

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Last week, the Department of Homeland Security (DHS) issued a proposed rule that would amend its F-1 nonimmigrant student visa regulations regarding optional practical training (OPT) for students with higher education degrees in science, technology, engineering, or mathematics (i.e., the STEM fields). The proposed rule is in response to a 2015 federal district court case that vacated the current OPT STEM regulations because of alleged procedural errors when those regulations were enacted. The court stayed its ruling until January 2016, however, allowing the earlier regulations to remain in effect until then and giving DHS time to issue a new rule, which is exactly what they are doing.

Who Would This Proposed Rule Affect?

The rule would impact F-1 nonimmigrant students who seek an OPT extension based on a STEM degree and the employers that employ them. F-1 nonimmigrant students are students enrolled in a full course of study at a qualifying institution authorized by the U.S. government to accept international students. Students may apply to engage in OPT before or after they complete their degrees. Obtaining a OPT exemption allows students to be temporarily employed for twelve months

What's New?

This proposed rule includes [a new benefit and several new obligations](#) with which employers would have to comply:

1. The proposal increases the OPT extension period for STEM OPT students from 17 to 24 months. This is in addition to an initial twelve months of OPT that STEM students may utilize.
2. The proposal requires employer to implement a formal mentoring and training program for STEM OPT students.

3. To guard against negative effects on U.S. workers, the proposal requires the employer to (1) have sufficient resources and trained personnel available to provide the student with appropriate mentoring and training; (2) not terminate, lay off, or furlough any current employee as a result of providing a STEM OPT opportunity to a student; and (3) ensure that the OPT experience assists the student in attaining his or her training objective.

What Would Stay the Same?

1. STEM OPT employers must continue to be enrolled in USCIS' E-Verify program and to report changes in the STEM OPT student's employment.
2. The Cap-Gap extension for nonimmigrants continues if the OPT student timely files an H-1B petition and requests a change of status.

Costs for STEM OPT Employers

Employers who rely on the OPT program for STEM graduates may want to be considering and/or creating a Mentoring and Training plan for students. We should know more about the final shape of the rule as the end of the year approaches, and Hinshaw will continue to track the progress.

For further information, please contact your Hinshaw employment attorney.

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