

WHAT EMPLOYERS SHOULD KNOW ABOUT HIRING INTERNATIONAL STUDENTS

Many employers have questions about U.S. government regulations related to the employment of international students in the United States due to changes in federal laws governing non-citizens, particularly the Immigration Reform and Control Act of 1986 (IRCA) and the Immigration Act of 1990 (IMMACT90). This brochure addresses concerns employers might have about international students and work.

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:

- ▶ *Optional Practical Training*
- ▶ *Curricular Practical Training*

Optional Practical Training (OPT) must be authorized by the United States Citizenship and Immigration Services (USCIS) based on a recommendation from the designated school official (DSO) at the school which issued the Form I-20, a government document which verifies the student's admission to that institution. The term "optional" means that students can opt to use all or part of their total practical training allotment of a maximum of 12 months.. OPT can be authorized by the USCIS:

- (1) during vacation when school is not in session (full time employment is allowed);
- (2) for part-time work, a maximum of 20 hours per week, while school is in session;
- (3) after completing all course requirements for the degree; or
- (4) full time after completion of the course of study.

Students who have received OPT permission will be issued an Employment Authorization Document (EAD) by the INS. Their name, photo and valid dates of employment are printed on the EAD. Employers should note that the average processing time for INS to issue the EAD is approximately three months, and students may begin employment only after they receive the EAD which will indicate the starting and ending dates of employment. Students are eligible for up to 12 months of OPT per educational level. A student becomes eligible for another 12 months of OPT when he or she changes to a higher educational level.

Curricular Practical Training 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 printed on page three of the Form I-20 student copy and will include the name of the company, beginning and ending date, 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. Employers should check with the student's institution for an approximate turn-around time.

International students on F-1 visas are eligible for both curricular practical training before finishing their studies, as well as 12 months of OPT. However, students who work full-time on curricular practical training for one year or more are not eligible for OPT. Those engaging in OPT prior to graduation may work for a maximum of 20 hours per week during their school term and 40 hours during their break period.

MINIMAL PAPER WORK FOR THE EMPLOYER

Fortunately, there is little paperwork for an employer who hires F-1 students. All paperwork is handled by the students, the school, and INS. For curricular practical training, the school will make a notation on the students' copy of the Form I-20 indicating that curricular practical training has been authorized, and specifying the duration and place of employment. Students authorized for optional practical training are required to apply to USCIS (through the school) for an Employment Authorization Document (EAD).

CONTINUING EMPLOYMENT AFTER THE PRACTICAL TRAINING PERIOD

Federal regulations require that employment terminate at the conclusion of the authorized practical training period. However, students on an F-1 visa may continue to be employed, if they receive approval for a change in visa category-usually to H-1B. A bachelor's degree is a minimum normal requirement for the position to be eligible for the H-1B visa category.

Individuals may work in the United States 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 INS 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 exempted by a tax treaty, F-1 students earning income under 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 students are exempted from social security and Medicare tax requirements. However, if F-1 students are considered "resident aliens" for income tax purpose, 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)

CFR Title 8 citations governing IRCA requirements are:

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

Copies of Code of Federal Regulations are available from the Superintendent of Documents in Washington D.C. or from the web site: <http://www.access.gpo.gov/nara/cfr/index.html>

FREQUENTLY ASKED QUESTIONS

Isn't it illegal to hire international students because they do not have a green card?

No. Federal regulations permit the employment of international students on F-1 visas within certain limits. This visa allows students to work in jobs related to their major field of study. F-1 students can work on "practical training."

Even if it's legal to hire international students, won't it cost a lot of money and involve a lot of paperwork?

No. The only cost to the employer hiring international students is the time and effort to interview and select the best candidate for the job. The international student office handles the paperwork involved in securing the work authorization for F-1 students. In fact, a company may save money by hiring international students because the majority of them are exempt from Social Security (FICA) and Medicare tax requirements.

How long can international students work in the United States with their student visa?

F-1 students are eligible for curricular practical training before completing their studies, as well as an additional 12 months of optional practical training per educational level, either before or following graduation, or a combination of the two. However, if they work full-time for one year or more of curricular practical training, they are not eligible for Optional Practical Training.

Don't international students need work authorization before I can hire them?

No. International students must have the work authorization before they begin actual employment, but not before they are offered employment. Many F-1 students will be in the process of obtaining work authorization while they are interviewing for employment. Students can give employers a reasonable estimate of when they expect to receive work authorization.

What does the work authorization look like?

For Optional Practical Training, F-1 students receive from INS an Employment Authorization Document (EAD), a small photo identity card that indicates the dates for which they are permitted to work. For Curricular Practical Training, F-1 students receive authorization from the school (NOT from USCIS) on the back of the Form I-20. "No Service endorsement is necessary" - per 8CFR 274a.12(b)(6)(iii).

What if I want to continue to employ international students after their work authorization expires?

With a bit of planning ahead, an employer can hire international students to continue to work for them in the H-1B visa category for a total of six years (authorization is granted in two three-year periods). The H-1B is a temporary working visa for workers in a "specialty occupation." The application procedure to the USCIS is straightforward. The job must meet two basic requirements:

- 1) The salary must meet the prevailing wage as defined by the Department of Labor
- 2) A bachelor's degree is a minimum normal requirement for the position.

Doesn't an employer have to prove that international students are not taking jobs from a qualified American?

No. American employers are not required to document that a citizen of another country did not take a job from a qualified American if that person is working under a F-1, J-1 or H-1B visa. Employers must document that they did not turn down a qualified American applicant for the position only when they wish to hire foreign citizens on a permanent basis and sponsor them for a permanent resident status ("green card").

Can I hire international students as volunteer interns?

Yes. If the internship involves no form of compensation and is truly voluntary, the students may volunteer without having to do any paperwork with the INS. If, however, the internship provides a stipend or any compensation, students must obtain permission for practical training or academic training prior to starting their internship.

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