

New STEM OPT Rules: Going Back to School

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Employers who hire STEM OPT graduates – science, technology, engineering, or math optional practical training workers – should know that the Department of Homeland Security has updated its regulations. STEM OPT is a program that gives non-immigrant students the ability to work in a job related to their degree in the United States following graduation. Under the current rules, qualified students may receive 12 months of OPT after completing each education level. Additionally, STEM students may apply for an additional 17 months of OPT if their employers are enrolled and in good standing with the E-Verify employment eligibility program. Effective May 10, 2016, the new rules now allow for 24 months of additional OPT, but also increased the qualification requirements for both students and employers. The highlights are detailed below.

First, employers and students are required to work together to create a formal “training plan” that identifies specific learning objectives, as well as a plan for achieving those objectives. The Form I-983 DHS Training Plan requires several categories of information:

- The student and employer must decide on the student’s role during employment and how that role will enhance the student’s knowledge.
- The student must include his or her goals and objectives, with details on how the employer will fulfill those goals.
- The employer must include its standards for measuring and assessing the student’s newly acquired knowledge and skills.

Second, there are **new obligations** for STEM OPT employers:

- Employers must remain in good standing with E-verify.
- Employers must attest to having sufficient resources and personnel to provide appropriate training to STEM OPT students.
- Employers must attest that the student will not replace a U.S. worker.
- Employers must attest that the opportunity will help the student attain their training objectives.

Third, there are **new tracking requirements** which will require reporting to the designated school official (“**DSO**”). A DSO is appointed by the student’s school to maintain and update Student and Exchange Visitor Program (“**SEVIS**”) records. There are four main reporting requirements:

- Every six months, biographical, residential, and employment information must be confirmed.
- Employers must report any material change or deviation from the formal training plan, within five business days of any changes.
- Employers must file employment status reports which update the Department of Homeland Security (“**DHS**”) on the student’s termination or departure, also within five business days of any status change.
- The student must report to the DSO on his or her training progress.

Additionally, the DHS plans to utilize site visits of employers in order to ensure compliance with the new regulations. Immigration and Customs Enforcement (“**ICE**”) has been proposed as the agency responsible for conducting these visits. However, the DHS has clarified that ICE will not use STEM OPT as a “gateway” to other types of audits unless evidence of other violations is discovered. Despite this assurance, employers should ensure that all employment practices are up to date in order to avoid potential issues with ICE or the DHS.

STEM OPT is a valuable opportunity for both students, who gain experience, and employers, who gain the benefits of the work of highly qualified employees. In light of the shortage of H-1B visa numbers available, employers will need to consider alternatives for employing foreign national workers, including extended OPT periods. However, the new requirements are complex and compliance with all aspects of the new regulations is necessary to remain in good standing with the DHS. Haynes Boone is ready to help with all aspects of the STEM OPT process.

For more information, please contact one of the lawyers listed below.