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United States – New Rules Covering STEM-OPT Extension

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flash Alert

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Effective May 10, 2016, F-1 visa students with Science, Technology, Engineering, and Mathematics ("STEM") degrees may be eligible to extend their initial post-completion Optional Practical Training ("OPT") for an additional period of 24 months.

On March 11, 2016, U.S. Department of Homeland Security ("USDHS") published a final Rule amending the regulations on STEM OPT extension, allowing for a STEM OPT extension of 24 months – STEM OPT extension was previously available for 17 months.¹

Students who have already applied for, or currently hold, a 17-month STEM extension will be eligible to request an additional seven months.

Seven-month extension applications must be filed on or before August 8, 2016.

Why This Matters

New Rule's Benefits to Employers:

Longer post-graduation employment period in United States – STEM eligible students will have a total of up to 36 months of OPT Employment Authorization – 12 months initial post-completion OPT and 24 months STEM OPT Extension.

More STEM eligible degrees – USDHS has expanded the list of eligible STEM degrees, although the new list has not yet been released. More foreign students will become eligible for STEM OPT extension.

Expanded eligibility to qualify for STEM extension – Employers likely will have more options to hire and retain foreign students to work in the U.S. as STEM extension does not need to be based on the most recent degree obtained by the foreign student.

A previous STEM eligible degree obtained within the past 10 years can provide the basis to qualify for the 24-month extension, provided that the prior degree is directly related to the current position

Employer Compliance Obligations

While U.S. employers enjoy additional benefits for hiring foreign students under the amended regulations, they must also meet the following obligations:

- Enrolled in E-Verify and remain in good standing.
- Report material changes to the STEM OPT student's Designated School Official ("DSO") within five (5) business days.

- Implement a formal training program.
- Provide an OPT opportunity that matches similarly placed U.S. workers.
- Complete Form I-983, *Training Plan for STEM OPT Students* – this must be completed and signed by the employer and student prior to applying for STEM OPT. The Training Plan must attest that:
 - the U.S. employer has sufficient staff and trained personnel to train the student;
 - the student will not replace a U.S. worker; and
 - the work will further the student's training.

Qualifying Criteria for STEM OPT Extension

The foreign students must:

1. have been granted OPT and currently be in a valid period of OPT;
2. have earned a bachelor's degree, or higher, from an accredited school (a student may use a prior STEM degree to qualify, provided that he/she has not already received a STEM OPT Extension based on that degree);
3. work for an employer who meets all of the new STEM OPT Employer Responsibilities requirements; and
4. File Form I-765, *Application for Employment Authorization* up to 90 days before the current OPT employment authorization expires, and within 60 days of the date the DSO enters the recommendation for OPT in to the SEVIS record (Student and Exchange Visitor Information System record).

It is also important to note that the new Rule provides for a longer unemployment period – a maximum of 150 days.

STEM OPT students may be unemployed for an additional 60 days during the 24-month STEM OPT extension period, in addition to the 90-day unemployment period during the initial post-completion OPT.

Footnote:

- 1 See the *Federal Register* (online) at:

<https://www.federalregister.gov/articles/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and>

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