

DHS Announces Changes Affecting Employment Options for Nonimmigrant Students

Legal Alert
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Garvey Schubert Barer Legal Update, April 9, 2008.

The Department of Homeland Security (DHS) has recently taken several actions that should benefit certain foreign national individuals temporarily authorized to be in the U.S. and their employers. Changes affect those individuals in full-time student status (F-1) and an aspect of a program called Optional Practical Training (OPT). OPT allows up to full-time employment in a job directly related to the student's major area of study. The changes affect only OPT employment for the period after completion of course requirements.

Until these changes took effect (announced on April 4 and effective on April 8, 2008 [1]) F-1 students could apply for OPT only until the date of completion of course requirements. They could be approved for up to 12 months of employment in OPT status. Employment Authorization Documents (EAD's) for OPT employment could be valid for only up to a full 12 months. F-1 status can be authorized to continue for a period of up to 60 days beyond completion of education and authorized practical training. So, for most F-1 students using post-completion employment based on OPT, their F-1 status would expire 14 months after graduation, normally in mid-to-late summer.

Potential employers of many of these students had expressed interest in continued employment of the student beyond the period authorized by OPT. The most common employment status, called H-1B status, normally begins for the first time, no earlier than October 1. This often left students with a "cap-gap," the period of weeks or even months between the end of OPT and F status, and October 1.

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The changes will allow students to apply for post-completion OPT up to 60 days after the program end-date, to bridge the "cap-gap" when an H-1B petition is properly filed, and to extend post-completion OPT employment authorization for a limited group of individuals who have specific degrees and who work for a specific group of employers. The details of these and other changes are available only in the Federal Register, published on April 8, 2008 (Volume 73, Number 68), at pages 18944-18956.

Revisions to the Application for Employment Authorization, Form I-765, have yet to be introduced to reflect the new Question 17 that will include requests for information regarding the student's degree, the employer's E-Verify Company I.D. number, or if the employer is using a Designated Agent to perform the E-Verify queries, a valid E-Verify Client Company I.D. number.

The student's degree, as shown in the Student and Exchange Visitor Information System (SEVIS), must be a bachelor's, master's, or doctorate degree with a degree code that is on the current STEM Designated Degree Program list, which is available at <http://www.ice.gov/sevis>. To be eligible for the 17-month OPT extension, a student must have received a degree in the following:

Actuarial Science, NCES CIP Code 52.1304

Computer Science: NCES CIP Codes 11.xxxx (except Data Entry/Microcomputer Applications, NCES CIP Codes 11.06xx)

Engineering: NCES CIP Codes 14.xxxx

Engineering Technologies: NCES CIP Codes 15.xxxx

Biological and Biomedical Sciences: NCES CIP Codes 26.xxxx

Mathematics and Statistics: NCES CIP Codes 27.xxxx

Military Technologies: NCES CIP Codes 29.xxxx

Physical Sciences: NCES CIP Codes 40.xxxx

Science Technologies: NCES CIP Codes 41.xxxx

Medical Scientist (MS, PhD): NCES CIP Code 51.1401

This Program list is based on the "Classifications of Instructional Programs" (CIP) and is available at http://nces.ed.gov/pubs2002/2002165_2.pdf.