

Employing Students in the STEM OPT Program Just Got Much More Complicated for Employers

Labor & Employment Law Update

By Sara Zorich on March 28, 2016

On March 11, 2016, the new rules regarding the STEM (Science, Technology, Engineering, Math) OPT program were posted in the Federal Registrar and will take effect on May 10, 2016.

The new STEM program allows students to be approved for work authorization for 24 months vs. the previous 17 month program and allows current students to apply for an additional 7 months of work authorization.

While the additional work eligibility is good news for both students and employers, the new rules subject employers to heightened compliance requirements including:

- Employers and students will be required to create and abide by a training plan for each STEM OPT student. This plan must include:
 1. Details about the assignments and tasks the student will carry out and how they relate to the student's degree
 2. Specific skills, knowledge and techniques the student will learn and how those goals will be achieved
 3. Explanation of employer oversight of the student
 4. Information about the measures and assessments of the student's acquisition of new skills
- The student and employer representative responsible for the student must sign an annual evaluation report, mid-point evaluation and final evaluation.
- The student and employer must complete the new Form I-983 as part of the application process. As part of completing the Form I-983, an employer must attest that:
 1. It has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity
 2. The student will not replace a full- or part-time, temporary or permanent U.S. worker

3. The opportunity will help the student attain his or her training objectives
- Employers hiring STEM OPT students can be subjected to Department of Homeland Security site visits to verify whether the employer is meeting the program requirements and employer notification requirements.

Furthermore, the rule retains the requirement that the employer be registered with E-Verify in order to employ a STEM OPT student.

Any applications filed by a student for participation in STEM OPT on or after May 10, 2016 are subject to the new rule. Therefore, employers must analyze their current and future participation in the STEM program and should consider the following:

- Does the company want to participate in the STEM OPT program going forward? If yes, is the company prepared for the additional compliance requirements?
- How is the company going to address students who want to apply for the additional 7 months requiring the current employer to comply with the new rules/requirements?
- What the company can and cannot say during the hiring process to potential employees regarding the company's position on employment based sponsorship of employees.

Through this new rule, the Government has sent a clear message that it is making it much more complicated for employers to hire foreign workers. Employers should contact immigration and employment counsel to address the application of this new rule to their company.

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