

## EXPERT ANALYSIS

### The New Stem Opt Rule for International Student Training: A Summary For Employers

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On March 11, the Department of Homeland Security published a final rule further extending the Optional Practical Training program for international students who hold non-immigrant F-1 visas to study in the science, technology, engineering and mathematics fields.

The STEM OPT extension provides a 24-month period of temporary training that directly relates to an F-1 student's program of study in an approved STEM field, replacing the current 17-month STEM OPT. This is in addition to the 12-month OPT for all students.

To qualify for STEM OPT, a student must work at least 20 hours per week.

The new 24-month rule became effective May 10. Students whose 17-month STEM OPT extension expired before then, or who had fewer than 150 days remaining on their 17-month STEM OPT extension employment authorization document May 10, are not covered under the transition plan.

#### WHAT EMPLOYERS NEED TO KNOW

##### Reporting requirements

Employers play a key role in maintaining and strengthening the integrity of the STEM OPT extension program. Although the program's various reporting requirements apply predominately to students and designated school officials, the program also requires some reporting by employers to assist in tracking STEM OPT students and their progress.

STEM OPT employers must complete a training plan, Form I-983, and designate an official with signatory authority to certify information.

Form I-983 identifies learning objectives and outlines a plan for achieving them.

The designated official certifies the information provided is true and correct and must be familiar with the STEM OPT student's goals and performance. Sections 3 through 6 of the form require specific information about the company, the agreed-upon practical training schedule, and compensation.

There is space on the form where an employer must give details regarding the tasks and assignments and how those tasks directly relate to the student's STEM degree. Employers must also describe the specific knowledge, skills and techniques the student will gain and provide a training curriculum and timeline that explain how goals will be achieved.

Employers must provide an explanation of oversight and supervision of the STEM OPT student as well as information about the measures and assessments used to confirm the student is acquiring new knowledge and skills.

Employers are expected to review each student's annual self-evaluation and attest to its accuracy. This assessment is to be submitted within 10 days from completion of the first 12 months and upon the conclusion of STEM OPT training.

Employers must also work with STEM OPT students to inform the designated school officials of any material changes to, or material deviations from, the formal training plan.

*Both the employer and the student must notify the designated school official when the student's employment is terminated for any reason before the end of the authorized extension period.*

Material changes include:

- Changes to an employer identification number resulting from a corporate restructuring.
- Reduction in student compensation that is not tied to a reduction in hours worked.
- Significant decrease in hours per week that a student engages in a STEM training opportunity.
- Changes to the employer's commitments or student's learning objectives as documented on the Form I-983.

Finally, both the employer and the student must notify the designated school official when the student's employment is terminated for any reason before the end of the authorized extension period. The employer must report the date of the student's termination or departure to the appropriate designated school official no later than five business days after such an event. Email communication will be acceptable.

The departure date is the earlier of:

- The date the employer knows the student has left the practical training opportunity.
- Five consecutive business days after the student has not reported for their practical training (without the employer's consent).

#### **Employer site visits**

A new provision in the STEM OPT rule allows the Department of Homeland Security to perform site visits to employer locations with STEM OPT students to reduce the potential for abuses of the extension and to ensure that students receive appropriate work-based learning experiences.

During site visits, the DHS will confirm that information reported on Form I-983 is accurate. Unless the visit is triggered by a complaint or other evidence of noncompliance with the STEM OPT extension regulations, employers will be given 48 hours advance notice.

As part of a site visit, the DHS may confirm that there are sufficient resources and supervisory personnel to effectively maintain the program and ask employers to provide evidence used to assess wages of similarly situated U.S. workers.

The DHS may request compliance-related information by email or phone in lieu of — or in addition to — a physical site inspection.

#### **FICA withholding**

Like regular OPT holders, STEM OPT participants generally are not subject to withholding under the Federal Insurance Contributions Act — Social Security and Medicare contributions — until after the first five calendar years that they hold F-1 non-immigrant status.

As a participant in STEM OPT, a student is not considered a resident for federal tax purposes as long as he complies with the requirements of the F-1 visa and has not already held F-1 status for parts of five calendar years.



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