

U.S. Employer's Guide to Hiring International Students

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FRAGOMEN

The purpose of this brochure is to illustrate options available for hiring international students for internships and full-time career opportunities after graduation.

International students are allowed to obtain work authorization under specific circumstances, whether during their studies or after graduation.

The precedent for international students to obtain temporary U.S. work authorization is longstanding and well-established, and the application process is straightforward. This document will provide an overview on the process followed when hiring an international student for internships and full-time opportunities.

Interstride does not provide any immigration or other legal advice. Instead, we partner with Fragomen, Del Rey, Bernsen & Loewy (Fragomen), which is the largest and oldest immigration law firm in the world. As part of this partnership, Fragomen Partner Aaron Blumberg offers a free 30 minute consultation to employers who are interested in sponsoring international students for work visas. You can contact Aaron directly at ablumberg@fragomen.com if you have any questions or wish to schedule the complimentary consultation.



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Overview

Most international students who are neither U.S. Citizens nor Permanent Residents enroll in academic programs under one of two non-immigrant student immigration statuses, F-1 or J-1. Since the majority of international students maintain F-1 student status, the focus of this guide will be on how to hire an F-1 student.

Please note that a Social Security Number alone is not sufficient proof of work authorization for international students. It is critical that employers confirm an international student's work authorization prior to employment start date to prevent any liability for the student and the employer in the future. All employees must complete their I-9 process at the time employment begins.



Internship

Hiring an F-1 International Student for an Internship

CURRICULAR PRACTICAL TRAINING (CPT)

Curricular Practical Training (CPT) is work authorization that allows F-1 students to accept practical training in their academic field after one year of full-time study. Internship programs are some of the most common types of CPT opportunities for international students. Students can choose to work full or part-time during their internships, depending on the institution's CPT policy. In some cases, graduate students who are required by their academic program to participate in an internship in the first year do not have to complete one full academic year before they are eligible.

DURATION

There is no limit, but 12 months of full-time CPT eliminates eligibility for OPT. Part-time CPT employment does not affect eligibility for OPT.

Note: Graduate students can accept CPT on Day 1 of their full-time study, if required by their program

EMPLOYER ROLE

Applying for CPT is solely the responsibility of the student and therefore requires no action on the part of the hiring organization. (The employer usually needs to issue a letter to confirm the internship offer.)

STUDENT ROLE

After the student has been offered an internship, he or she submits an online application to the sponsoring school providing the internship start and end dates as well as the organization's name and complete physical address. The student also needs to provide the job title and a detailed job description. This process is facilitated by the student's International student services office. In accordance with U.S. immigration regulations, students who engage in part-time or full-time CPT must still be full-time students during the academic year. They do not need to be enrolled full-time during official vacation periods (such as summer).

COST AND PROCESSING TIME

There is no cost to the employer. The processing and approval time for CPT is usually within 5-10 working days.



Full Time

Hiring an F-1 International Graduate for a Full-Time Internship or employment — Initial 12 month OPT

POST-COMPLETION OPTIONAL PRACTICAL TRAINING (OPT)

Post-completion Optional Practical Training (OPT) is work authorization that allows F-1 status students who have graduated to gain practical work experience related to their major field of study.

DURATION

12 months for F-1 students (Please note, any approved pre-completion OPT will be deducted from the 12 months OPT period.)

EMPLOYER ROLE

Applying for OPT is solely the responsibility of the student and therefore requires no action on the part of the hiring organization. OPT can be granted to the student with or without an offer of employment.

STUDENT ROLE

Obtaining OPT work authorization is a two-step process. First, the F-1 student submits a request for an OPT recommendation which is processed and approved by an international advisor at the student's international services office. Second, the F-1 student mails in her/his completed OPT application, supporting documentation, and required fee to the USCIS to secure OPT work authorization. Once approved, the USCIS issues an Employment Authorization Document (EAD) card as proof of work authorization for the 12-month period. The fee is \$410, which is paid by the student. (Fee effective as of 12/2/19)

COST AND PROCESSING TIME

There is no cost to the employer. The USCIS processing time for OPT takes an average of 60 days but can take up to 3-4 months during peak OPT processing season (starting in February each year); therefore, students are encouraged to apply as early as 90 days prior to graduation. The new employee must have the EAD card in hand to start work.



Hiring an F-1 STEM Graduate for Practical Training—24 Month STEM OPT

An additional 24 months of OPT work authorization (for a total of 36 months) allows F-1 student status holders who have graduated with an approved degree in Science, Technology, Engineering or Math (STEM) to gain extra practical work experience related to their STEM field.

DURATION

24 months for F-1 graduates

EMPLOYER ROLE

- Be enrolled and in good-standing with E-Verify
- Prepare and implement a formal training program to support the student's academic learning through practical experience. The training program is signed by both the employer and student, and submitted to the international student services office for approval. A report of the student's progress is submitted to the student's international student services office mid- way and at the end of the 24-month program.
- Report termination of employment to the student's international student services office within 5 business days.
- Be prepared for a government agent worksite visit to verify STEM OPT program requirements are being met.

- Provide an employment opportunity similar to U.S. workers in duties, hours, and compensation. Attest that:
 - a. The company has enough resources and trained personnel available to appropriately train the student;
 - b. The student will not replace a full- or part-time, temporary or permanent U.S. worker; and
 - c. Help the student attain his or her training objectives.

STUDENT ROLE

The student submits the completed I-983 training plan as part of their STEM OPT request to the international student services office, which processes the STEM OPT recommendation for the student. The F-1 student mails her/his completed OPT application, supporting documentation, and required fee to USCIS. Once approved, USCIS issues an Employment Authorization Document (EAD) card as proof of work authorization for the 24- month period. The fee is \$410, which is paid by the student.

COST AND PROCESSING TIME

There is no cost to the employer. The international student services office processes the student's STEM OPT recommendation within a few working days. The USCIS processing time for STEM OPT takes an average of up to 3 - 4 months, with some cases taking 5-6 months. The STEM OPT Extension must be filed prior to the expiration of the initial OPT period. If students file their STEM OPT extension applications on time and their OPT period expires while their extension application is pending, their work authorization is automatically extended for 180 days. (USCIS does not have to do anything, the regulations allow for the automatic extension of the work authorization if the student timely files their STEM OPT application.)



Long Term

Hiring and Retaining Long-Term Global Talent

H-1B STATUS

Applications for H-1Bs are submitted to the USCIS by the sponsoring company on behalf of the international employee. Each fiscal year companies are allowed only 65,000 H-1Bs for candidates who have completed undergraduate degrees, and an additional 20,000 are available for those who have completed graduate degrees in the U.S. Certain non-profit employers are not subject to the H-1B cap numbers.

DURATION

H-1B status is initially granted for up to three years, but can be renewed for a total of six years.

EMPLOYER ROLE

The employer is responsible for filing the H-1B petition on behalf of the international employee. Many companies find that retaining an experienced immigration attorney is helpful to facilitate the process.

COST AND PROCESSING TIME

Inclusive of attorney and USCIS application fees, the total cost to apply for an H-1B visa can be between \$3,000 - 7,000.

RECOMMENDED TIMELINE

For the upcoming Fiscal Year 2021, employers wishing to file an H-1B petition must first submit registrations during a registration period from March 1 - 20. They must name and pay a \$10 registration fee for each individual they wish to file for, and may only enter each employee once. USCIS will then conduct a lottery of all registrations received, and will notify petitioners which beneficiaries have been selected. The petitioner will then have a 90-day period beginning April 1 to file a complete H-1B petition on behalf of its selected beneficiaries. NOTE: For beneficiaries on OPT, the petitioner will need to file a complete H-1B petition with a change of status requesting an employment start date of October 1 before the OPT period ends in order for the OPT work authorization to be extended through September 30. ⓘ

SPECIAL CASES

Some non-profit research and non-profit higher educational institutions are able to secure H-1Bs not subject to the yearly quota of 85,000. Citizens of Chile and Singapore, through a treaty with the U.S., are provided with a special allocation of 6,800 visas; as a result, these citizens have an easier time securing U.S. work authorization. H-1B1 is given in one year increments, eligible for renewal indefinitely.

ⓘ In April 2008, a new law was established to enable those with an approved H-1B application to remain employed during the transition period between the end of OPT and the start of H-1B. The new regulation eliminates any gaps in employment previously experienced in the transition from OPT to H-1B if the H-1B petition is timely filed while the student is still in their approved period of OPT employment, and the H-1B petition is filed with a change of status application effective October 1.



More information

For employers wishing to hire a J-1 status holder, there is no fee involved or action to be taken. The J-1 student simply obtains authorization from his/ her program sponsor to work for up to a total of 18 months. PhD. students can work for up to 36 months. It is the sole responsibility of the student to complete the application process with the program sponsor and approval is generally granted within 5-10 working days. The work must be directly related to the academic degree program, and is certified by the academic institution's J-1 responsible officer.

TN STATUS

Canadian or Mexican citizens who will be working in the areas listed on the TN- employment list. The current processing fee is \$56 at the Border, or it's \$160 at the Embassy/Consulates. The status is valid for up to 3 years after which the employee must request an extension of stay through his/her employer.

L-1 STATUS

The L-1 is for intra-company transferees. Employees must work at an affiliated foreign office for a minimum of one year before being transferred to the U.S. The current processing fee is \$460 plus a \$500 anti-fraud fee. The status is valid for up to three years and may be extended for an additional two years, until the employee has reached the maximum limit of seven years for managers/executives (L-1A), and five years for workers with specialized knowledge (L-1B).

O-1 STATUS

The O-1 status is a temporary work status available to those foreign nationals who have “extraordinary ability in the sciences, arts, education, business or athletics” which “have been

demonstrated by sustained national or international acclaim.” USCIS interprets the statute very broadly to encompass most fields of creative endeavor. For example, chefs, carpenters and lecturers can all obtain O-1 visas. Some recent students may qualify for O-1 status based on their experience, education and contributions to their field of expertise.

E-3 STATUS

Australians working in professional positions in the U.S. may be eligible for the E-3 status. The current processing fee is \$460. The status is valid for 24 months but may be renewed.

E STATUS

The E-1 and E-2 status for Treaty Traders and Treaty Investors allows temporary admission to Foreign Nationals of countries that have a commerce or investment treaty with the United States. The status allows Foreign Nationals to conduct substantial trade in the U.S. or to make investments by either purchasing a controlling interest in an existing U.S. business or establishing a new business venture. Major foreign companies that establish a presence in the United States generally qualify for E-2 status. This status provides an excellent vehicle for easily hiring international graduates who have the same nationality as the foreign base company. Also, unlike the L-1 status which requires at least year prior employment with the foreign entity, E beneficiaries can be new hires (fee varies by country). For most countries, the status is valid for five years, and may be extended indefinitely.

POSSIBLE ADDITIONAL FEES

In some cases, there is a required visa issuance reciprocity fee, if applicable. Please consult the United States Department of State, Visa Reciprocity Tables to find out if you must pay a visa issuance reciprocity fee and what the fee amount is.

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Note: This handout is intended to provide general information only and is not intended to serve as legal advice. It should not be relied upon as a substitution for immigration advice from qualified immigration practitioners.