

 **Shepherd University**

 **International Student Affairs**

**What Employers Should Know About Hiring International Students**

Many employers are concerned about liability related to the employment of international students in the United States due to changes in federal laws governing non-citizens. This handout is provided by International Student Affairs at Shepherd University to address concerns employers might have about international students and work. If you have any question, please email our office at 304-876-5325 or 5809.

Getting permission for international students to work in the US is not as difficult as many employers think. Most international students are in the US on non-immigrant student visas (F-1 and J-1), and these international students are eligible to accept employment under certain conditions.

**Minimal paper work for the employer**

Fortunately, there is little paperwork for an employer who hires F-1 or J-1 students. All paperwork is handled by the student, the school, and in some cases, by the USCIS.

**Practical training for F-1 students**

Practical training is a legal means by which F-1 students can obtain employment in areas related to their academic field of study. Students, in general, must have completed one academic year (approximately nine months) in F-1 status and must maintain their F-1 status to be eligible for practical training. There are two types of practical training:

* Curricular Practical Training
* Optional Practical Training

**Curricular Practical Training (CPT)** may be authorized by the institution and does not need to be adjudicated by USCIS. CPT is for F-1 students participating in curricular-related employment such as cooperative education, practicum, and internship programs. Authorization is annotated on the third page of Form I-20 student copy and will include the name of the company, beginning and ending dates of employment, and signature of the Designated School Official (DSO). At Shepherd University students should contact the International Student Affairs office. Processing time for the authorization of CPT varies, but can usually be accomplished within 1-2 days providing all required application materials are on hand. International students in F-1 visa status are eligible for both curricular practical training before finishing their studies, as well as 12 months of OPT. However, students who work full-time on curricular practical training for one year or more are not eligible for OPT.

**Optional Practical Training (OPT)** must be authorized by the US Citizenship and Immigration Services (USCIS) based on a recommendation from a Designated School Official (DSO) at the school which issued the Form I-20. The term “optional” means that students can opt to use all or part of their total practical training allotment of a maximum of 12 months. OPT can be authorized by the USCIS in the following ways: (1) during vacation when school is not in session (full time employment is allowed); (2) for part-time work, a maximum of 20 hours per week, while school is in session; (3) after completing all course requirements for the degree (e.g., doctoral student working on dissertation); or (4) full-time after completion of the course of study. Students who have received OPT permission will be issued an Employment Authorization Document (EAD) by USCIS. Their name, photo, and valid dates of employment are printed on the EAD. Employers should note that the average processing time for USCIS to issue the EAD is three months, and students may begin employment only after they receive the EAD which will indicate the starting and ending dates of the employment authorization.

**OPT STEM Extension** of 24-months may be available to graduates of STEM programs. When granted, the graduate will have a total work authorization of 36 months. Students are eligible for this extension if they have already been approved for 12 months of post-completion OPT, have earned a degree in a field included on the U.S. Government’s list of Science, Technology, Engineering, and Mathematics (STEM) fields, are employed in a job directly related to their field of study and are working for an employer that is enrolled in the U.S. Government’s E-Verify program.

**Academic Training (AT) for J-1 students**

“Academic Training” (AT) is a legal means by which J-1 students can obtain employment in areas related to their academic field of study. Authorization is provided by the host institution or organization, rather than by USCIS. International students in J-1 visa status are eligible for up to 18 months of AT. Some J-1 students are also allowed to work part-time during the academic program. Academic Training is granted in the form of a letter by the Responsible Officer (RO) or Alternate Responsible Officer (ARO) at the school or sponsoring organization that issued the Form DS-2019. Students should consult with the Director, International Initiatives, at Shepherd University for authorization.

**Continuing employment after the practical/academic training period**

Federal regulations require that employment terminate at the conclusion of the authorized period for practical or academic training. However, students on an F-1 visa, or students on a J-1 visa who are not subject to a two-year home residency requirement, may continue to be employed by changing their visa status to H-1B. This visa status is valid for a maximum of six years and is employer dependent; that is, a change in employers requires a reapplication to USCIS for an updated H-1B visa. The employer essentially acts as the sponsor for the visa, which when granted, also has an inherent opportunity to seek permanent residence (i.e., green card). The petition would be filed on behalf of the company and usually requires an immigration lawyer.

**What about taxes?**

Unless exempted by a tax treaty, F-1 and J-1 students earning income under practical training are subject to applicable federal, state, and local income taxes. Information on tax treaties may be found in Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens, and 901, U.S. Tax Treaties. Generally, F-1 and J-1 students are exempted from Social Security and Medicare tax requirements. However, if F-1 and J-1 students are considered “resident aliens” for income tax purposes, Social Security and Medicare taxes should be withheld. Chapter 1 of Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens explains how to determine the residency status of international students. More information on Social Security and Medicare taxes can be found in Chapter 8 of Internal Revenue Services Publication 519, U.S. Tax Guide for Aliens and in Section 940 of Social Security Administration Publication No. 65-008, Social Security Handbook.

Frequently Asked Questions

**Isn't it illegal to hire international students because they do not have a green card?**

No. Federal regulations permit the employment of international students on F-1 and J-1 visas within certain limits. These visas allow students to work in jobs related to their major field of study. F-1 students can work under “practical training” provisions in the law and J-I students may work on “academic training” provisions.

**Even if it's legal to hire international students, won't it cost a lot of money and involve a lot of paperwork?**

No. The only cost to the employer hiring international students is the time and effort to interview and select the best candidate for the job. The international office at the school handles the paperwork involved in securing the work authorization for F-1 and J-1 students. In fact, a company may save money by hiring international students because the majority of them are exempt from Social Security (FICA) and Medicare tax requirements.

**How long can international students work in the United States with their student visa?**

Some F-1 students are eligible to apply for curricular practical training before completing their studies, as well as an additional 12 months (in some cases an additional 24 months) of optional practical training, either before or following graduation, or a combination of the two. However, if they work full-time for one year or more of curricular practical training, they are not eligible for Optional Practical Training. Students with a J-1 visa are usually eligible to work up to 18 months following graduation. They may also be eligible to work part-time during their program of study. The Responsible Officer (RO) or Alternate Responsible Officer (ARO) will evaluate each student’s situation to determine the length of time for which they are eligible to work.

**Don't international students need work authorization before I can hire them?**

No. International students must have the work authorization before they begin actual employment, but not before they are offered employment. In fact, J-1 students must have a written job offer in order to apply for the work authorization. Many F-1 students will be in the process of obtaining work authorization while they are interviewing for employment. Students can give employers a reasonable estimate of when they expect to receive work authorization.

**What does the work authorization look like?**

For Optional Practical Training, F-1 students receive from USCIS an Employment Authorization Document (EAD), a small photo identity card that indicates the dates for which they are permitted to work. For Curricular Practical Training, F-1 students receive authorization from the school (NOT from USCIS) on the third page of the student’s Form I-20. Work authorization for J-1 students is an annotation on their form DS-2019.

**What if I want to continue to employ international students after their work authorization expires?**

With a bit of planning ahead, an employer can hire international students to continue to work for them in the H-1B visa category for a total of six years (authorization is granted in two three-year periods) and thereafter indefinitely with approved permanent residency. The H-1B is a temporary working visa for workers in a “specialty occupation.” The application procedures for both the H-1B and permanent residency may require the assistance of an immigration attorney.

**Doesn't an employer have to prove that international students are not taking jobs from a qualified American?**

No. American employers are not required to document that a citizen of another country did not take a job from a qualified American if that person is working under an F-1, J-1, or H-1B visa. Employers must document that they did not turn down a qualified American applicant for the position only when they wish to hire foreign citizens on a permanent basis and sponsor them for US lawful permanent resident status (“green card”).

**Can I hire international students as volunteer interns?**

This requires a legal answer for your specific situation. In general, the Fair Labor Standards Act considers an internship “employment” (requiring a fair wage) unless the terms appropriate for “trainee” are met. Please consult the Department of Labor Fact Sheet #71: Internship Programs Under the Fair labor Standards Act.