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March 10, 2016

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Immigration Law Update

Current Developments in Immigration

Greetings!

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

Foreign Students in the U.S. Can Work Longer Through New STEM Optional Practical Training (OPT) Rule

The Department of Homeland Security (DHS) has released the final version of the revised OPT rule for international students with degrees in science, technology, engineering, and mathematics (STEM) fields. The final rule, which can be found [here](#), will be published in the Federal Register on Friday, March 11, 2016, and will go into effect on May 10, 2016.

The new rule contains several changes to the STEM OPT program. Most notably, the new rule extends the STEM OPT extension period from 17 months to 24 months. In addition, the rule also contains significant oversight and enforcement revisions, and places new requirements on employers.

The rule contains the following revisions:

1) To be eligible to apply for a STEM OPT extension, students must have earned a degree from a school accredited by an accrediting agency recognized by the U.S. Department of Education, and certified by the Student and Exchange Visitor Program ("SEVP");

2) Students that have received an additional qualifying degree can now apply for a second STEM OPT extension;

3) Employers of STEM OPT employees must incorporate formal training programs that identify specific learning objectives for the employees, and must report any material changes in the program. Training plans must be submitted on new Forms I-983, which will be released by USCIS in the near future;

4) The terms and conditions of the STEM OPT workers' employment, including duties, hours and compensation, must be on par with U.S. workers in similar positions in the same geographical area of employment;

5) OPT workers may not replace full-time, part-time, temporary, or a permanent U.S. worker;

6) Employers of STEM OPT employees must follow new reporting requirements, which include confirming students' residence and employment statuses every six months, and must evaluate students' progress under the training plans regularly; and

7) The rule allows for DHS site visits to employers' locations where STEM OPT workers are employed; and

8) Students can use a previously-earned qualifying degree to apply for STEM extension as long as it has not already formed the basis for a STEM extension.

As was the case under the 2008 OPT STEM rule,

employers of OPT STEM workers are required to enroll in E-Verify, and the rule retains the "Cap-Gap" extension for F-1 nonimmigrants who file H-1B cap-subject petitions requesting a change of status prior to the expiration of their OPT STEM employment.

F-1 nonimmigrants who have already received 17-month STEM extensions may be eligible to apply for an additional 7 months of OPT employment, if they:

- 1) Satisfy the new requirements of the STEM OPT program, including having their employer submit a training plan on Form I-983;
- 2) File an I-765 with USCIS **on or before August 8, 2016** and **within 60 days** of the date their SEVIS record was updated by their DSO; and
- 3) Have at least 150 calendar days remaining in their 17-month STEM OPT EAD.

Rosner, Ortman, and Moss Partners, LLC will continue to closely monitor the changes in the STEM OPT program. If you have any questions on how these changes will impact your or your employee's eligibility for a STEM OPT extension, we encourage you to contact us.

E-3, H-1B1, and CW-1 Workers now Benefit from 240 Day Employment Authorization Rule

USCIS has amended the rule that grants 240 days of continued employment authorization during the pendency of an extension of status application to include E-3, H-1B1, and CW-1 nonimmigrants. Now, individuals working in E-3, H-1B1, and CW-1 status are authorized to continue working for 240 days after the expiration of their status as long as their employer files a timely extension of stay with USCIS. Previously, the 240 days of continued employment authorization only benefited individuals in A-3, E-1, E-2, G-5, H-1B, H-2A, H-2B, H-3, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R-1, and TN nonimmigrant status.

The new rule is a welcome change as it allows employers of E-3, H-1B1, and CW-1 nonimmigrants more time to file extension of status petitions without facing possible gaps in employment authorization.

For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please unsubscribe on the link below.

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