

# EMPLOYERS, IT'S TIME TO DO YOUR HOMEWORK: NEW STEM EXTENSION RULES FOR F-1 EMPLOYEES

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# DISCUSSION TOPICS

- Overview of the New Regulation
- Changes for Employers
- Impacts on Certain Types of Working Arrangements
- Implementation Timelines
- Employer Risk Areas
- Establishing a Corporate Policy to Ensure Compliance
- What to Tell Students

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# OVERVIEW OF CHANGES

- STEM regulations go into effect on May 10, 2016
- Employer obligations during 12 month OPT not affected by new regulations
- What hasn't changed?
  - Employer must be in good standing with E-Verify
  - Report changes to student's employment to DSO w/in five business days
  - Cap-Gap Extension
  - Timely filed STEM extension automatically extends OPT for 180 days
  - 20 hr/wk minimum
- STEM extensions available to students with qualifying science, technology, engineering, or math degree from DOE-accredited US institution (<https://www.ice.gov/sites/default/files/documents/Document/2016/stem-list.pdf>; any updates will be published in the Federal Register by ICE)

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# OVERVIEW OF CHANGES

- 24 month STEM extension
- STEM extensions available to students working in OPT even after attaining subsequent non-STEM degree
- Second STEM extension available after completing second, higher-level degree in US
- F-1 students permitted 150 total days of unemployment during OPT and STEM (90 days during OPT, 60 days during STEM)
- Formal training plan, including attestation, from employer
- DHS site visits to employers
- Reporting requirements for students, DSOs, and employers

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# FORM I-983 TRAINING PLAN

- SECTION ONE: Student Information
  - Completed by the student
  - Information about the student
  - Information about the school recommending STEM OPT
- SECTION TWO: Student Certification
  - Student certifies under penalty of perjury that:
    1. The training is related to the STEM degree
    2. They have reviewed, understand, and will adhere to the plan
    3. They will notify their DSO if employer is not providing training
    4. They understand that DHS may deny or terminate the STEM OPT
    5. They will notify DSO of any material changes to the plan

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# FORM I-983 TRAINING PLAN

- SECTION THREE: Employer Information
  - Must be completed by the employer
  - Basic information about employer
  - Must indicate that the student will work at least 20 hours per week
- SECTION FOUR: Employer Certification
  - Employer certifies under penalty of perjury that:
    1. The training plan has been reviewed and will be followed
    2. The DSO will be notified of any material changes, and
    3. They will report the termination or departure of the student to the DSO within five business days

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# FORM I-983 TRAINING PLAN

- SECTION FOUR: Employer Certification (continued)
  - The employer also certifies under penalty of perjury that:
    1. The students training is directly related to the STEM degree
    2. The student will receive on-site supervision and training by experienced and knowledgeable staff
    3. The employer has sufficient resources and personnel to provide the training and is prepared to implement the plan
    4. The student will not replace a full time, temporary or permanent US worker
    5. The students terms of employment are commensurate with similarly situated workers, and
    6. The training complies with all applicable federal and state employment requirements

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# FORM I-983 TRAINING PLAN

- SECTION FIVE: Training Plan
  - Student and employer must enter contact details for the staff member who will be responsible for monitoring the student’s goals and performance and must also lay out:
    1. The tasks and assignments the student will have and how it relates to their STEM degree
    2. The training curriculum and timeline and specific goals
    3. The specific skills, knowledge, and techniques the student will learn and apply
    4. How the student will achieve the goals
    5. How the employer will provide oversight and supervision, and
    6. How the employer will measure whether the student has acquired new skills or knowledge



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# FORM I-983 TRAINING PLAN

- SECTION SIX: Employer Official Certification
  - Employer certifies under penalty of perjury that:
    1. It has reviewed, understands, and will follow training plan
    2. It will conduct periodic evaluations of student, and
    3. It will notify the DSO of any material changes or deviation from the plan
  - The Employer's official who signs this section of the training plan does not have to be the same person who signs on behalf of the employer in section 4
- Other requirements in the plan:
  - Student Self-evaluations every 12 months
- <https://www.ice.gov/sites/default/files/documents/Document/2016/I-983.pdf>

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# CHANGES FOR EMPLOYERS

## Reporting Requirements

- Yearly self-evaluation of student on training progress must be signed by employer and submitted to DSO
- Report changes in employment status (termination/departure) within 5 business days to DSO
  - Must report departure if student does not show up to work for 5 consecutive business days
- Report material changes to formal training plan by providing modified training plan to DSO ASAP
  - Material: FEIN change, reduced wage, significant decrease in hours, decrease in hours below 20 hr/wk; anything that renders I-983 employer attestation inaccurate; anything that renders nature, purpose, oversight, or assessment portions of training plan inaccurate
  - Not material: change of supervisor, rotating between projects/positions/departments, change in division/research focus (subject to restrictions above)

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# CHANGES FOR EMPLOYERS

## Protections for US Workers

- Terms and conditions (duties, hours, pay) of STEM training must be commensurate with those of similarly situated US workers
  - “Similarly Situated”:
    - Employer must compare to at least two current or recent employees OR employees of companies of the same size/industry/geographic area
    - US workers subject to similar supervision, performing similar duties w/ similar education, work experience, level of responsibility, and skill set
    - Can look at DOL’s OFLC Online Wage Library - <http://www.flcdatcenter.com/oewizdstart.aspx>

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# CHANGES FOR EMPLOYERS

## DHS (ICE) Site Visits

- 48 hours' notice generally given
- No notice when visit based on complaint or evidence of noncompliance
- Purpose: verify that training plan is being followed and all information in SEVIS is accurate
  - May also verify that employer has the resources/personnel to provide training
  - May ask employer to provide evidence it used to assess wages of similarly situated US workers
  - If visit is in response to a specific complaint, it will address that complaint
- May also request information via phone/email in lieu of site visit

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# HOW THE NEW REGULATION IMPACTS CERTAIN WORK ARRANGEMENTS

- No Volunteering
- Regulation requires a bona fide employer/employee relationship
  - No sole proprietorships
  - Start-up businesses: allowed, so long as the student is not providing employer attestations on their own behalf.
- Employer signing the training plan must be the same entity that employs the student and provides the practical training
  - No staffing relationships?

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# IMPLEMENTATION TIMELINES

- USCIS will continue to adjudicate 17 month STEM requests through May 9<sup>th</sup>
- New regulation starts May 10<sup>th</sup>
- A student with an approved 17 month STEM extension may apply for an additional seven month extension (to get to 24 months) ONLY IF they have at least 150 days remaining on their 17 month extension between May 10<sup>th</sup> and August 8<sup>th</sup>
- Students with approved 17 month extensions do not have to apply for the seven month extension. If they choose not to, they are subject to the old rule
- Students with pending 17 month extensions as of May 10<sup>th</sup>, will be issued a Request for Evidence (RFE) allowing them to amend their petition to ask for the additional seven months. Again, students can decline to ask for the additional seven months
- Seven month extensions can only be applied for between May 10<sup>th</sup> and August 8<sup>th</sup>

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# EMPLOYER RISK AREAS

- Small companies beware – must have resources and personnel to provide training
- Opportunity must be directly related to STEM field
- DSO learning curve – give them plenty of time to review the training plan
- Complaints can bring disruptive, unannounced site visits
- Who are “similarly situated US workers”?
- Replacement of US workers – includes existing or prior employment of US workers
- Has there been a material change to the training plan?

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# ESTABLISHING A CORPORATE POLICY

- Enroll in E-Verify/Ensure E-Verify policy is effective
- Plan to start preparing STEM extension training plan approximately 5 months before OPT expires (90/60 time frame)
- Supervisors need to know and understand commitments in I-983
- Implement a mechanism for reporting changes to position to HR/immigration counsel to determine whether they are “material”
- Implement a mechanism for reporting early departures and unannounced absences of five business days
- Maintain training plan, evidence of similarly situated US worker analysis, and all proof of reporting to DSO for each STEM trainee
- If US worker in similar position terminated close in time to STEM extension start, carefully document reasons for termination



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# WHAT SHOULD YOU TELL AFFECTED STUDENTS?

- Plan ahead – resources at: <https://studyinthestates.dhs.gov/stem-opt-hub>
- Meet with their DSO
- Staffing companies – more in depth conversation
- Be flexible, open to alternatives:
  - OPT → OPT STEM EXT → H-1B
  - Apply for H-1B immediately after OPT (most employers already do this)
  - Alternatives to H-1B
    - Start green card process sooner
    - E-3 visas for Australian nationals
    - TN visas for Canadian and Mexican nationals
    - H-1B1 visas for nationals of Singapore and Chile

# QUESTIONS?



*"These new regulations will fundamentally change the way we get around them."*

From the current [New Yorker](#).

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# Thank You



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