USCIS Reverses Course, Allows STEM OPT Students to Work at Third-Party Sites

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U. S. Citizenship and Immigration Services (USCIS) has revised its website and announced that it will now allow F-1 students participating in the optional practical training (OPT) extension for individuals in science, technology, engineering and math (STEM) to work at third-party sites as long as the student’s employer can demonstrate that it has a bona fide employment relationship with the student, in addition to meeting all other training obligations.

Although the agency’s announcement describes the revision as a “clarification,” in actuality, it appears to be a reversal of the restrictions it published on its website in January 2018, which, among other things, prohibited the employment of STEM OPT students anywhere other than at the employer’s own place of business. The January 2018 changes caused considerable confusion, in part because they were made without any formal notice or announcement, leaving many to question whether a simple website revision should be given the weight of an official policy change or an amendment to the regulations. Adding to the confusion was the fact that USCIS’s new threshold for establishing a bona fide employment relationship exceeded the requirements of the 2016 STEM OPT final rule. It was also unclear how the new restrictions would be implemented and whether they would be applied retroactively to training plans that had already been approved.

The latest changes mark a return to policies that more closely mirror the regulations. Below is a list of the key revisions to USCIS’s STEM OPT website:

1. Employers that can demonstrate that they have a bona fide employment relationship with STEM OPT F-1 students and meet all other training obligations may place students at third-party work sites.

2. The Department of Homeland Security (DHS) will review training plans on a case-by-case basis to determine whether the student is a bona fide employee of the employer signing the training plan and to verify that the employer that signs the training plan is the one that provides the practical training experience.

3. There are new employer reporting requirements, including the following:
   - Employers must report material changes to student employment to the designated school official (DSO) at the earliest opportunity.
   - Employers must report termination of a student’s employment to the DSO within five business days.

While this is good news for students and employers, employers may still want to exercise caution when placing a student at a third-party work site. Employers may want to consider how they will document their bona fide employment relationships with their STEM OPT students. This is likely to be on employers’ minds given USCIS’
new **unlawful presence policy** that puts students at risk of accruing unlawful presence if they fall out of status, in this case by potentially violating the terms of their STEM OPT extension.

*Ogletree Deakins' Immigration Practice Group* will continue to monitor developments with respect to these changes and will post updates on the *Immigration blog* as additional information becomes available.