

USCIS Update on Third Party Employment Placements for 24 Month STEM OPT

USCIS (United States Citizenship and Immigration Services) has revised information on its STEM OPT webpage, clarifying the interpretation of the regulations regarding the employer-employee relationship "requirement" and conditions for third party placements, for STEM OPT students and employers.

The USCIS webpage is considered as policy guidance from USCIS. You may review the Federal Regulation on OPT STEM Extension as well as the USCIS webpage on STEM Employment below.

FEDERAL REGISTER FINAL RULE (REGULATION)

<https://www.federalregister.gov/documents/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and>

USCIS WEBPAGE ON STEM OPT

<https://www.uscis.gov/working-united-states/students-and-exchange-visitors/students-and-employment/stem-opt>

Some main points of the new content on the USCIS STEM OPT page include:

- In order to establish a bona fide relationship, the employer may not be the student's "employer" in name only, nor may the student work for the employer on a "volunteer" basis. Moreover, the employer that signs the Form I-983 must be the same entity that provides the practical training experience to the student.
- The "personnel" who may provide and supervise the training experience may be either employees of the employer, or contractors who the employer has retained to provide services to the employer; they may not, however, be employees or contractors of the employer's clients or customers.
- A STEM OPT employer may not assign, or otherwise delegate, its training responsibilities to a non-employer third party (e.g., a client/customer of the employer, employees of the client/customer, or contractors of the client/customer)
- The training experience must take place on-site at the employer's place of business or worksite(s) to which U.S. Immigration and Customs Enforcement (ICE) has authority to conduct employer site visits to ensure that the employer is meeting program requirements. This means that ICE must always have access to a student's worksite; if the student is sent to different worksite locations as part of the training opportunity, ICE must be able to access such worksite locations. For instance, the training experience may not take place at the place of business or worksite of the employer's clients or customers because ICE would lack authority to visit such sites.

- Online or distance learning arrangements may not be used to fulfill the employer's training obligation to the student. For instance, the employer may not fulfill its training obligation to provide a structured and guided work-based learning experience by having the student make periodic visits to the employer's place of business to receive training, while the student is actually working at the place of business or worksite of a client or customer of the employer.
- The employer may not fulfill its training obligation by having the student make periodic telephone calls or send periodic email messages to the employer to describe and discuss their experiences at the place of business or worksite of a client or customer of the employer.
- The student's practical training experience must be provided by the employer's own trained or supervisory personnel at the employer's own place of business or worksite(s), to which ICE has authority to conduct employer site visits to ensure that the employer is meeting program requirements.
- Staffing and temporary agencies may seek to employ students under the STEM OPT program, but only if they will be the entity that provides the practical training experience to the student at its own place of business and they have a bona fide employer-employee relationship with the student. For instance, a student might possibly receive STEM-related training while working in such an entity's information technology (IT) department.
- Such entities may not, however, assign or contract out students to work for one of their customers or clients, and assign, or otherwise delegate, their training responsibilities to the customer or client. As noted above, the employer that signs the Form I-983 must be the same entity that provides the practical training experience to the student.

International Student Services urges students on STEM OPT and students applying for STEM OPT to consult with their employers and a qualified attorney in order to understand the possible ramifications of this change on their employment.

ISS cannot provide guidance or interpretation of this information. Should your employer consider themselves in compliance with immigration regulations and policies, students may submit the appropriate documentation to ISS for STEM OPT processing.

Additional information can be found on the NAFSA webpage:

[https://www.nafsa.org/Professional Resources/Browse by Interest/International Students and Scholars/US CIS Tightens Language on Employer-Employee Relationship and Third Party Placement for STEM OPT Students/](https://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/US_CIS_Tightens_Language_on_Employer-Employee_Relationship_and_Third_Party_Placement_for_STEM_OPT_Students/)