

**COMPARING NON-IMMIGRANT VISA STATUSES
OPT, INCLUDING STEM OPT, AND H-1B
FOR UT HEALTH SA EMPLOYEES**



Standard Optional Practical Training (F-1 Student Status): A foreign national who earned an academic degree in the U.S. while in F-1 student status is generally eligible for 12 months of Optional Practical Training (OPT) following the completion of that degree. OPT is work authorization that can be used anywhere in the U.S. provided that the foreign national is working in his/her field of study.

Advantages:

- The employee is responsible for working with the respective International Office at the school where the academic degree was earned to submit a relatively straightforward application to United States Citizenship and Immigration Services (USCIS). The employee needs to present the Employment Authorization Document (EAD) for I-9 completion. Employer sponsorship is not required.
- The employee is also responsible for paying the application fee, currently \$410. The department is not required to pay this fee, but can do so if desired.
- The department does not need to take any immediate action with respect to the employee's immigration status.
- The employee is eligible for a 60-day grace period at the end of his/her OPT to depart the U.S. or change to another visa status.
- The employee's F-1 status is not tied to the employer, and s/he can change employers relatively easily by updating this information with his/her Designated School Official (DSO) at his/her school.
- The employee can work for multiple employers, provided that all employment is directly related to his/her field of study.
- There is no requirement to determine that the department is paying the higher of the prevailing wage or actual wage when hiring individuals with an OPT card, as there is with an H-1B.
- The individual has an additional 12 months of work authorization that does not subtract from the six-year limit in H-1B status, and thus providing the individual more time to apply for permanent resident status, if applicable.

Disadvantages:

- OPT is only valid for 12 months for employees who graduated from non-STEM programs.
- While an individual is on OPT, s/he is still in F-1 student status and must continue to report employment and address changes to the DSO at his/her school.
- S/he must also obtain a travel signature from a DSO when travelling outside the U.S.
- If s/he has submitted an I-485 to apply for adjustment to the status of permanent resident, s/he may have difficulties traveling outside the U.S. in F-1 status or applying for an F-1 visa extension while waiting for the advanced parole travel card or green card, as individuals in F-1 status are required to demonstrate non-immigrant intent. S/he should consult an immigration attorney if such a situation arises.
- F-2 dependents of those in F-1 status are not eligible for work authorization.

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STEM Extension of Optional Practical Training (F-1 Student Status): A foreign national who is currently on post-completion OPT and graduated with a Bachelor's, Master's or Doctoral degree in a STEM program listed on the Department of Homeland Security's [STEM designated degree program list](#) is eligible for a 24-month extension of OPT. STEM OPT is work authorization that can be used anywhere in the U.S. provided that the foreign national is working in his/her field of study for an E-verified employer. The University of Texas Health Science Center San Antonio is an E-verified employer.

Advantages:

- The employee is responsible for working with the respective International Office at the school where the academic degree was earned to submit a relatively straightforward application to USCIS prior to the end date of his/her current OPT. The employee needs to present the EAD card when completing the I-9.
- The employee is also responsible for paying the application fee, currently \$410. The department is not required to pay this fee, but can do so if desired.
- The department does not need to take any immediate action with respect to the employee's immigration status.
- The employee's F-1 status is not tied to the employer, and s/he can change employers relatively easily by updating the DSO at his/her school, and no notification to USCIS is required as with an H-1B.
- The employee is eligible for a 60-day grace period at the end of his/her STEM OPT to depart the U.S. or change to another visa status.
- The employee can continue working up to 180 days beyond the expiration of the standard post-completion OPT if the STEM OPT application was timely filed, and would present the I-797 receipt notice for I-9 purposes.
- The employee can work for multiple employers, provided that all employment is directly related to his/her field of study, each employer is E-verified, and the employee/employer meet all reporting requirements.
- If using both OPT and STEM OPT, the employee has 36 months of work authorization that does not subtract from the six-year limit in H-1B status, and thus providing the individual more time to apply for permanent resident status, if applicable.

Disadvantages:

- While on STEM OPT, s/he is still in F-1 student status and must continue to report employment/address changes to the DSO at his/her school.
- STEM OPT regulations require that the employer and employee complete a Form I-983, formal training plan, to be submitted both prior to the STEM OPT extension request, as well as when there have been any material changes to the training plan. This plan includes specific information about the organization, the agreed-upon practical training schedule and compensation, as well as the formal training plan. This plan also includes employer attestations that there are sufficient resources and trained personnel available to provide appropriate mentoring and training in connection with the specified opportunity.
- STEM OPT regulations also require the employer to confirm (1) that the terms and conditions of a STEM OPT student's employment, including duties, hours, and compensation, are commensurate with those for similarly situated U.S. workers, and (2) that no U.S. worker will be terminated, laid off, or furloughed as a result of a STEM OPT.
- The employee must submit a self-evaluation within 12 months of the OPT STEM start date, and a second, final assessment that recaps the training and knowledge acquired during the complete training period. The employer must review the employee's annual self-evaluation on his/her progress and sign it to attest to its accuracy.
- The employer and employee both must notify the DSO at the school where the employee's I-20 was issued when the employee's employment is terminated for any reason before the end of the authorized extension period. The employer must report such a change in employment to the appropriate DSO at the school where

the employee's I-20 was issued no later than five business days after the employee's employment terminates or the employee has departed.

- The employee must obtain a travel signature from a DSO when travelling outside the U.S.
- If the employee has submitted an I-485 to apply for adjustment to the status of permanent resident, s/he may have difficulties traveling outside the U.S. in F-1 status or applying for an F-1 visa extension while waiting for the Advance Parole Card or green card, as individuals in F-1 status are required to demonstrate non-immigrant intent. S/he should consult an immigration attorney if such a situation arises.
- F-2 dependents of those in F-1 status are not eligible for work authorization.

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H-1B Specialty Occupation Status: Appropriate for any professional employment position that requires a minimum of a Bachelor's degree or higher degree in a specific field for a person holding the required degree and any required license. At the University of Texas Health Science Center, these positions include, but are not limited to:

- Assistant, Associate, or Professors
- Professor, Associate, Assistant, or Instructor/Clinical
- Professor, Associate, Assistant, or Instructor/Research
- Lecturers/Instructors
- Research Scientists
- Postdoctoral Research Fellows
- Other Professional Exempt Staff where a specific degree is minimum requirement

Advantages:

- It may be easier to obtain an H-1B visa stamp versus an F-1 visa stamp because H-1B is a dual intent category and non-immigrant intent is not an issue. This is especially important if the employee has applied for permanent residency.
- There is no requirement that the H-1B visa applicant maintain a residence abroad.
- The initial H-1B petition can be filed for a period of three years, as can extensions, up to a maximum of six years total.
- Employee has a grace period of up to 60 consecutive days if their employment is terminated prior to the end of their H-1B status, so they may more readily pursue new employment and an extension of their nonimmigrant status. This grace period is authorized at the discretion of USCIS and during each authorized validity period, employee.

Disadvantages:

- The department is required to pay employee the prevailing wage, as calculated by OIS using U.S. Department of Labor (DOL) wage information.
- The department is required to pay USCIS filing fees and \$750 IDT to OIS.* Premium processing can be paid by the employee only if it is purely for the employee's benefit, such as personal international travel plans.
- OIS must file a Labor Condition Application (LCA) with DOL prior to filing H-1B petition, identifying and posting the LCA at worksites in advance.
- If there are any material changes in the employment, such as a change in job title, substantial change in job duties, or move from full-time to part-time, etc., OIS has to file an amended petition with USCIS prior to the effective date of the change.
- Without premium processing, adjudication of an H-1B petition can take 2 to 6 months, not including OIS and DOL processing times prior to filing.
- Generally, H-4 spouses cannot work, although there are limited exceptions.

- If employee is terminated, regardless of cause, before expiration date on I-797 Approval Notice, the department must pay reasonable transportation costs to employee's home country. The department is not required to pay these costs for any dependents of the H-1B employee.
- Maximum possible time in H-1B status is six years with limited exceptions, which cuts into the time the employee has to apply for permanent residency status, if applicable.

**Filing fees: I-129 Filing Fee \$460 + Anti-Fraud Fee \$500 (employer's initial petition only) + I-539 Filing Fee \$370 (for family members in the US) and I-539A Biometric Fee \$85 per co-applicant + Premium Processing Fee \$2,500, if required or desired.*