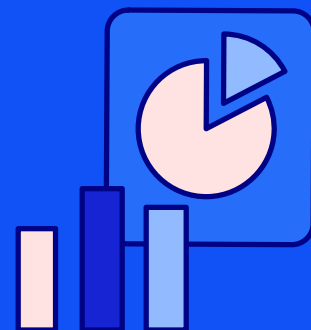




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# U.S. Employer's Guide to Hiring International Students



[contact@interstride.com](mailto:contact@interstride.com) | [interstride.com](https://interstride.com)



## Our Partnership

**The purpose of this brochure is to illustrate options available for hiring international students for internships and full-time career opportunities after graduation.**

International students are allowed to obtain work authorization under specific circumstances, whether during their studies or after graduation.

The precedent for international students to obtain temporary U.S. work authorization is longstanding and well-established, and the application process is straightforward. This document will provide an overview on the process followed when hiring an international student for internships and full-time opportunities.

Interstride does not provide any immigration or other legal advice. Instead, we partner with Fragomen, Del Rey, Bernsen & Loewy (Fragomen), which is the largest and oldest immigration law firm in the world. As part of this partnership, Fragomen Partner Aaron Blumberg offers a free 30 minute consultation to employers who are interested in sponsoring international students for work visas. You can contact Aaron directly at [ablumberg@fragomen.com](mailto:ablumberg@fragomen.com) if you have any questions or wish to schedule the complimentary consultation.

# FRAGOMEN



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## Overview

**Most international students who are neither U.S. Citizens nor Permanent Residents enroll in academic programs under one of two non-immigrant student immigration statuses, F-1 or J-1. Since the majority of international students maintain F-1 student status, the focus of this guide will be on how to hire an F-1 student.**

Please note that a Social Security Number alone is not sufficient proof of work authorization for international students. It is critical that employers confirm an international student's work authorization prior to employment start date to prevent any liability for the student and the employer in the future. All employees must complete their I-9 process at the time employment begins.



# Internship

## Hiring an F-1 international student for an internship

### Curricular Practical Training (CPT)

Curricular Practical Training (CPT) is work authorization that allows F-1 students to accept practical training in their academic field after one year of full-time study.

Internship programs are some of the most common types of CPT opportunities for international students. Students can choose to work full or part-time during their internships, depending on the institution's CPT policy.

In some cases, **graduate students** who are required by their academic program to participate in an internship in the first year do not have to complete one full academic year before they are eligible.

### Duration

There is no limit, but 12 months of full-time CPT eliminates eligibility for OPT. Part-time CPT employment does not affect eligibility for OPT.

**Graduate students** can accept CPT on Day 1 of their full-time study, if required by their program.

### Employer role

Applying for CPT is solely the responsibility of the student and therefore requires no action on the part of the hiring organization.

**Important note!** The employer usually needs to issue a letter to confirm the internship offer.

### Student role

After the student has been offered an internship, he or she needs to submit an online application to the sponsoring school providing the:

- Internship's start and end dates
- Organization's name and complete physical address
- Job title and a detailed job description.

This process is facilitated by the student's international student services office.

**Important note!** In accordance with U.S. immigration regulations, students who engage in part-time or full-time CPT must still be full-time students during the academic year. They do not need to be enrolled full-time during official vacation periods (i.e., summer break).

### Cost and processing time

There is no cost to the employer. The processing and approval time for CPT is usually within 5-10 working days.



## Full-Time Employment on OPT

### Hiring an F–1 international graduate for a full-time internship or job (initial 12 month OPT)

#### Post-completion Optional Practical Training (OPT)

Post-completion Optional Practical Training (OPT) is work authorization that allows F–1 status students who have graduated to gain practical work experience related to their major field of study.

#### Duration

OPT allows for 12 months of work for F–1 students.

**Important note!** Any approved pre-completion OPT will be deducted from the 12 months OPT period.

#### Employer role

Applying for OPT is solely the responsibility of the students and therefore requires no action on the part of the hiring organization, OPT can be granted to the student with or without an offer of employment.

#### Student role

Obtaining OPT work authorization is a two-step process:

1. The F–1 student submits a request for an OPT recommendation which is processed and approved by an international advisor at the student's international services office.
2. The F–1 student files her/his completed OPT application, supporting documentation, and required fee to the USCIS to secure OPT work authorization.

Once approved, the USCIS issues an Employment Authorization Document (EAD) card as proof of work authorization for the 12-month period. The fee is \$520 if filed by paper and \$470 if filed online, which is paid by the student.

#### Cost and processing time

There is no cost to the employer. The USCIS processing time for OPT takes an average of 90 days but can take up to 3–5 months during peak OPT processing season (starting in February each year); therefore, **students are encouraged to apply as early as 90 days prior to graduation.**

**Important note!** The new employee must have their EAD card in hand to start work.



# Full-Time Employment on STEM OPT

## Hiring an F-1 STEM graduate for Practical Training (24 month STEM OPT)

An additional 24 months of OPT work authorization (for a total of 36 months) allows F-1 student status holders who have graduated with an approved degree in Science, Technology, Engineering or Math (STEM) to gain extra practical work experience related to their STEM field.

### Duration

STEM OPT allows for an additional 24 months for F-1 students.

### Employer role

- Be enrolled and in good-standing with E-Verify
- Prepare and implement a formal training program to support the student's academic learning through practical experience. The training program is signed by both the employer and student, and submitted to the international student services office for approval. A report of the student's progress is submitted to the student's international student services office mid-way and at the end of the 24-month program.
- Report termination of employment to the student's international student services office within 5 business days.
- Be prepared for a government agent worksite visit to verify STEM OPT program requirements are being met.
- Provide an employment opportunity similar to U.S. workers in duties, hours, and compensation. Attest that:
  - The company has enough resources and trained personnel available to appropriately train the student;
  - The student will not replace a full- or a part-time, temporary or permanent U.S. worker; and
  - Help the student attain his or her training objectives.

### Student role

These are the steps for obtaining STEM OPT work authorization:

- The student submits the completed I-983 training plan as part of their STEM OPT request to the international student services office, which processes the STEM OPT recommendation for the student.
- The F-1 student files her/his completed OPT application, supporting documentation, and required fee to USCIS.

Once approved, USCIS issues an Employment Authorization Document (EAD) card as proof of work authorization for the 24-month period. The fee is \$520 if filed by paper and \$470 if filed online, which is paid by the student.



## Cost and processing time

There is no cost to the employer. The international student services office processes the student's STEM OPT recommendation within a few working days.

The USCIS processing time for STEM OPT takes an average of up to 3–4 months, with some cases taking 5–6 months. **The STEM OPT Extension must be filed prior to the expiration of the initial OPT period.**

If students file their STEM OPT extension applications on time and their OPT period expires while their extension application is pending, their work authorization is automatically extended for 180 days.

**Important note!** USCIS does not have to do anything, the regulations allow for the automatic extension of the work authorization if the student timely files their STEM OPT application.





# Long-Term Employment

## Hiring and retaining long-term global talent

### H-1B status

Applications for H-1Bs are submitted to the USCIS by the sponsoring company on behalf of the international employee. Each fiscal year companies are allowed only 65,000 H-1Bs for candidates who have completed undergraduate degrees, and an additional 20,000 are available for those who have completed graduate degrees in the U.S..

**Note:** Certain non-profit employers are not subject to the H-1B cap numbers.

### \$100K Fee:

The new \$100,000 H-1B fee applies only to H-1B petitions that require consular processing, meaning the beneficiary must obtain the visa at a U.S. consulate abroad. Individuals already in the United States who can file for an in-country change of status (such as F-1 students on OPT or STEM OPT) are NOT subject to the fee. The fee also does not apply to H-1B extensions, amendments, or transfers filed for workers already in H-1B status inside the U.S. Employers hiring workers directly from abroad, or whose employees travel internationally during the H-1B filing or adjudication process, may trigger the fee. Because of this, H-1B beneficiaries are strongly encouraged to minimize international travel during the H-1B filing process.

### Duration

H-1B status is initially granted for up to three years, but can be renewed for a total of six years.

### Employer role

The employer is responsible for filing the H-1B petition on behalf of the international employee. Many companies find that retaining an experienced immigration attorney is helpful to facilitate the process.

### Cost and processing time

USCIS application fees for an H-1B visa are between \$2,010 and \$3,380. Premium processing costs an additional \$2,805.

### Recommended timeline

Employers wishing to file an H-1B petition must first submit registrations during a registration period in the first 2-3 weeks of March. They must name and pay a \$215 registration fee for each individual they wish to file for, and may only enter each employee once.

USCIS will then conduct a lottery of all registrations received, and will notify petitioners which beneficiaries have been selected. The petitioner will then have a 90-day period beginning April 1 to file a complete H-1B petition on behalf of its selected beneficiaries.



**Important note!** For beneficiaries on OPT, the petitioner will need to file a complete H-1B petition with a change of status requesting an employment start date of October 1 before the OPT period ends in order for the OPT work authorization to be extended through September 30.

### **Special cases (H-1B cap-exempt & H-1B1 visas)**

Some nonprofit research organizations and nonprofit higher education institutions are eligible to sponsor H-1B visas that are cap-exempt, meaning they are not subject to the annual quota of 85,000 and can file year-round.

Meanwhile, citizens of Chile and Singapore benefit from a special agreement with the U.S. through the H-1B1 visa, which reserves 6,800 visas exclusively for them each year. H-1B1 visas are issued in one-year increments and are indefinitely renewable, offering a more flexible path to U.S. work authorization.

**Importante note!** The cap-gap extension enables those with an approved H-1B application to remain employed during the transition period between the end of OPT and the start of H-1B. The new regulation eliminates any gaps in employment previously experienced in the transition from OPT to H-1B if the H-1B petition is timely filed while the student is still in their approved period of OPT employment, and the H-1B petition is filed with a change of status application effective October 1.



## More Information

For employers wishing to hire a J-1 status student, there is no fee involved or action to be taken. The J-1 student simply obtains authorization from his/her program sponsor to work for up to a total of 18 months, while PhD students can work for up to 36 months (but the academic training period cannot exceed the length of the academic program).

It is the sole responsibility of the student to complete the application process with the program sponsor and approval is generally granted within 5–10 working days. The work must be directly related to the academic degree program, and is certified by the academic institution's J-1 responsible officer.

### **TN status**

Canadian or Mexican citizens who will be working in the areas listed on the TN-employment list. The current processing fee is \$56 at the Border, or it's \$185 at the Embassy/Consulates. The status is valid for up to 3 years after which the employee must request an extension of stay through his/her employer.

### **L-1 status**

The L-1 is for intra-company transferees. Employees must work at an affiliated foreign office for a minimum of one year before being transferred to the U.S. The current fees range from \$1,495 to \$2,485, depending on the size of the employer.

The status is valid for up to three years and may be extended for an additional two years, until the employee has reached the maximum limit of seven years for managers/executives (L-1A), and five years for workers with specialized knowledge (L-1B).

### **O-1 status**

The O-1 status is a temporary work status available to those foreign nationals who have “extraordinary ability in the sciences, arts, education, business or athletics” which “have been demonstrated by sustained national or international acclaim”.

USCIS interprets the statute very broadly to encompass most fields of creative endeavor. For example, chefs, carpenters and lecturers can all obtain O-1 visas.

Some recent students may qualify for O-1 status based on their experience, education and contributions to their field of expertise.

### **E-3 status**

Australians working in professional positions in the U.S. may be eligible for the E-3 status. The processing fees total \$1,615, with optional premium processing for another \$2,805. The status is valid for 24 months but may be renewed.



## **E-1 and E-2 status**

E-1 and E-2 status for Treaty Traders and Treaty Investors allows temporary admission to Foreign Nationals of countries that have a commerce or investment treaty with the United States. The status allows Foreign Nationals to conduct substantial trade in the U.S. or to make investments by either purchasing a controlling interest in an existing U.S. business or establishing a new business venture.

Major foreign companies that establish a presence in the United States generally qualify for E-2 status. This status provides an excellent vehicle for easily hiring international graduates who have the same nationality as the foreign base company.

Also, unlike the L-1 status which requires at least one year prior employment with the foreign entity, E beneficiaries can be new hires (fee varies by country). For most countries, the status is valid for five years, and may be extended indefinitely.

## **Possible additional fees**

In some cases, there is a required visa issuance reciprocity fee, if applicable. Please consult the United States Department of State, Visa Reciprocity Tables to find out if you must pay a visa issuance reciprocity fee and what the fee amount is.