

Resources

Court Rules Government Must Reissue OPT STEM Regulations; May Accelerate Proposed Changes to the OPT Program

August 18, 2015

A U.S. District Court in Washington, D.C. ruled on August 12, 2015 to vacate a regulation authorizing 17-month OPT work authorization for foreign students with degrees in science, technology, engineering and mathematics (STEM), finding that the U.S. Department of Homeland Security (DHS) did not follow proper notice and comment administrative rulemaking procedures when enacting the rule. Acknowledging the potential impact to technology companies and the potential hardship to F-1 students, the judge suspended the vacatur until February 12, 2016, which will allow time for DHS to enact a new rule through the proper notice and comment procedure and potentially even expand options for students with STEM degrees.

What does this mean for employers of F-1 students?

Right now, eligible F-1 students with degrees in STEM fields may continue to apply for 17-month OPT extensions. U.S. Citizenship and Immigration Services (USCIS) will continue to approve and issue extensions. Further, for those F-1 students who are currently working pursuant to STEM OPT, their work authorization is not affected at this time.

What does this mean for the future of the OPT program?

In November 2014, the Obama Administration expressed a commitment to strengthen the OPT program through its *Modernizing and Streamlining Our Legal Immigration System for the 21st Century* plan. Shortly thereafter, DHS issued a memorandum directing USCIS and U.S. Immigration and Customs Enforcement (ICE) to develop regulations for notice and comment relating to OPT, specifically directing the agencies to expand the degree programs eligible for OPT and to extend the time period and use of OPT for foreign STEM students and graduates. The federal judge's decision to vacate the STEM OPT rule will likely accelerate the release of such a proposed rule which will likely result in an expansion of the OPT program.

For more information about this alert, please contact Kathleen Campbell Walker at 915-541-9360 or kwalker@dykema.com, Lisa Rios Donaldson at 915-541-9307 or ldonaldson@dykema.com, Heather Frayre at 214-698-7824 or hfrayre@dykema.com, James Aldrich at 248-203-0583 or jaldrich@dykema.com, or your Dykema relationship attorney.

Attorneys

James G. Aldrich

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