

EMPLOYMENT LAW

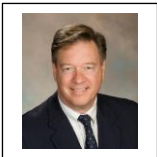
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IN THIS ISSUE

This month's article focuses on immigration issues with a specific emphasis on the hiring of foreign students who attend U.S. colleges and universities. This article provides practical information to colleges and universities on the options that are available in hiring foreign students and graduates.

A REFRESHER ON HIRING FOREIGN NATIONAL GRADUATES

ABOUT THE AUTHOR



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ABOUT THE COMMITTEE

The Employment Law Committee serves members who represent employers and their insurers. Committee members publish newsletters and Journal articles and present educational seminars for the IADC membership-at-large and mini-seminars for the committee's membership at the Annual and Midyear Meetings. The Committee presents significant opportunities for networking and business referrals. The goal of the Employment Law Committee is to build an active committee with projects that will attract and energize attorneys who practice employment law on a domestic and international basis.

Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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The International Association of Defense Counsel serves a distinguished, invitation-only membership of corporate and insurance defense lawyers. The IADC dedicates itself to enhancing the development of skills, professionalism and camaraderie in the practice of law in order to serve and benefit the civil justice system, the legal profession, society and our members.

Many employers are interested in meeting their workforce needs by tapping the global employment market. That market includes many fine foreign students attending U.S. colleges and universities and there is a new crop every spring. Employers and their counsel are often confused about the immigration rules for hiring foreign graduates of U.S. universities. The two most common methods for hiring a student or foreign graduate are Optional Practical Training and the popular H-1B visa.

Optional Practical Training

Most foreign students in the U.S. are in a visa status called F-1. All F-1 students are eligible for Optional Practical training (OPT), which allows the student to obtain real-world work experience related to the student's degree program. OPT is a very common way for many employers to hire F-1 students with minimal fees and paperwork. There is no paperwork to file with U.S. Citizenship and Immigration Services (CIS) and the employer pays no fees. This allows the employer to "try out" an individual before deciding to sponsor them for H-1B status.

OPT allows the student to work after graduation for any employer in a job related to the student's degree program. The job may be anywhere in the U.S. Most students in F-1 status are eligible for a total of 12 months of OPT. It is important to note, however, that students in so-called "STEM" degree programs (Science, Technology, Engineering and Mathematics) are eligible for 29 months of OPT. Employers registered with E-Verify for work-authorization purposes may take advantage of this longer OPT employment period for STEM graduates. This is very significant, because it adds a full 17 months to the work period allowed for non-STEM graduates. By extending the period of OPT

for STEM graduates, employers and graduates have a greatly improved prospect of successfully obtaining H-1B status for continued employment of the graduate in the U.S.

Employers and their advisors should remember that before a student can begin working using OPT, the student must apply for and obtain an Employment Authorization Document (EAD) from CIS. The EAD is a card which, similar to a driver's license, has a photograph of the bearer and authorizes employment for a set period. It is important to remember that no work can begin until the EAD is issued. It can take as long as 90-100 days for CIS to issue an EAD. It is, therefore, important to apply well in advance of the intended start of employment. Students may apply for the card as early as 90 days before graduation, so early recruitment and planning will ensure a seamless work experience.

The H-1B Work Visa

This is an extremely popular work visa. This visa is available to foreign nationals with a U.S. job offer who (a) have at least a U.S. Bachelor's Degree or foreign equivalent and (b) will be working in a job that requires at least a Bachelor's Degree, and (c) their degree relates to the job in question. H-1B status allows employment for 6 years, or longer. The employer must do some internal posting and submit an application to the CIS for approval of the work and the employee. Approvals can take as little as fifteen (15) days.

It is important to note that there is no need to advertise the position, and no need to determine if U.S. workers are available to fill the position. Unfortunately, some employers mistakenly believe those things are necessary to obtain H-1B status for a worker. Although

employers must post a notice about the job for ten days at the worksite stating that the employer is hiring an H-1B worker, this posting is not an advertisement, rather only a notice. Of course, employers must pay the H-1B worker the same wage and benefits provided to U.S. workers in similar jobs, and employers must pay the legal fees and filing fees for the H1B petition.

An important issue with the H1B program is the H1B quota (or the “H-1B Cap”). CIS may only issue 85,000 new H-1B approvals each fiscal year (October 1 through September 30). 20,000 of these are reserved for graduates with a US advanced degree.

This quota system and the rules governing when a worker application may be filed impose planning requirements on employers. CIS accepts applications for cases beginning April 1 for the next fiscal year’s quota, which is released on Oct. 1, which is also the employment start date for each new fiscal year’s H-1Bs.

The quota is usually filled, however, soon after the April 1 filing date for applications. For example, for the fiscal 2013 H-1B quota, employers started filing applications on April

1, 2012, for employment beginning on October 1, 2012. So many applications were filed, so fast, that the whole quota for fiscal 2013 was filled on June 11, 2012! Employers should, thus, plan their hiring so they may file their H-1B applications on April 1 in order to secure an H1B quota number.

While other limited visa options may be available for graduates at the conclusion of their OPT (for example TN for Canadians or Mexicans working in certain jobs; E-3 visa for Australians in professional positions, and other possible options), employers willing to recruit and plan with an eye on the calendar can painlessly broaden their reach into the international student talent pool.

Each year, employers hire thousands of highly capable and motivated foreign graduates of U.S. universities and achieve a competitive advantage over employers who do not. Employers should not let fear of, or inexperience with immigration processes prevent them from hiring the best and brightest graduates available, wherever they come from.

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John W. Sheffield, Justin A. Barkley and Mac B. Greaves

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Tamara Boeck, Anthony DeCristoforo, and Lee Smith

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Susan K. Eggum and Shane Swilley

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Mac B. Greaves and William "Chip" Collins

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