

Emergency Action Taken to Extend STEM OPT Program Rule Through May 10, 2016

As reported in our [November 9, 2015 New York Labor and Employment Law Report](#), the present STEM OPT rule which allows F-1 students with U.S. degrees in science, technology, engineering or mathematics (STEM) to extend their optional practical training (OPT) by 17 months was to expire on February 12, 2016, unless the U.S. Department of Homeland Security (DHS) could publish and promulgate a new rule. The present STEM OPT extension rule had been vacated by the U.S. District Court for the District of Columbia in August 2015 for procedural deficiencies in its promulgation, but the court's ruling was stayed until February 12, 2016, so DHS could publish a new rule for public comment and prevent hardship to the thousands of F-1 students employed in the U.S. on STEM OPT and the companies that employ those individuals.

Our November 9, 2015 blog post detailed some of the highlights of DHS' proposed STEM OPT extension rule which was published for comment in the Federal Register on October 19, 2015. The DHS received an overwhelming 50,000 plus comments to the proposed rule and, a few days before the Christmas holiday, asked the court for a 90-day extension of the existing STEM OPT rule so it could address the comments and begin to train DHS officers on the intended changes to the STEM OPT program. Following additional pleadings by DHS and Washington Alliance of Technology Workers (WashTech) — the plaintiff in the case that was before the U.S. District Court for the District of Columbia — the court, last Saturday, delayed its order terminating the STEM OPT rule as of February 12, 2016, and granted the DHS an additional 90 days to revise its proposed STEM OPT rule. The court extended the sunset date of the STEM OPT extension rule to May 10, 2016, and warned DHS that no further extensions would be granted.

As a result of this determination, those F-1 student employees with STEM OPT remain authorized to work in the U.S., at least through May 10, 2016. However, WashTech's counsel has indicated that an appeal of the decision to extend the sunset date by 90 days would be filed with the D.C. Circuit immediately.

We will continue to keep you informed of further developments in this matter so you and your employees can plan accordingly.

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