

## US officials site-visiting cos hiring STEM-OPT trainees

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Some companies that have hired STEM trainees under the optional practical training (OPT) program, are finding themselves subject to site visits by officials of the US Immigration and Custom Enforcement (ICE).

International students, who have completed their studies, are eligible for a 12-month OPT under which they can work in the US. Those who have completed their degrees in science, technology, engineering and mathematics (STEM) are eligible for applying for a further OPT extension of 24 months. This brings the OPT tenure available to them to three years.

Currently, there are nearly 2 lakh odd students from India, studying in the US. Statistics pertaining to fiscal year 2017, show that Indian students dominated the STEM-OPT allotments – over 50,000 were engaged under the OPT program .

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The main objective of such site visits is to verify that employers are complying with STEM-OPT requirements and meeting the obligations of the training plans.

OPT rules prescribe that there must be a bonafide employer-employee relationship. The employer which signs Form I-983 (which is an affirmation of their commitment to the OPT program) must be the same entity that provides practical training experience to the STEM-OPT students, even if they are placed at client sites. To illustrate - IT service companies or consultancies do depute their employees to client sites.

“A STEM-OPT employer must not assign, or otherwise delegate its training responsibilities to a non-employer third party such as the client’s employees,” explains Rajiv Khanna, managing attorney at Immigration.com

Fragomen, a global immigration law firm, in its newsletter states that: Though ICE had the authority to make site-visits since the time regulations governing the STEM OPT program were revised in May 2016, the agency has not begun to conduct inspections until now.

Mitchell Wexler, California based partner at Fragomen told TOI that: “Early reports are that OPT work site inspections are not significantly widespread but rather ad-hoc. This could change over time.”

“Employers should have a comprehensive inspection procedure in place. During the site visit, the officials could interview client personnel to discuss the training plan and its implementation. A tour of the premises may also be requested. ICE officials could verify whether working hours, working conditions and wages of the STEM-OPT trainees are commensurate with those of similarly situated US workers in the company, adds Wexler.

Employers are permitted to place STEM-OPT students at client sites, provided that all training obligations are met. ICE officials can also visit a third-party worksite where the STEM-OPT students have been placed.

“If there is a site visit, STEM-OPT students who are placed at third party sites are more vulnerable, as the third-party client may have no knowledge of the circumstances of their placement by the employer and may not be able to answer questions adequately to the site visit inspector. It is important for the employer who places STEM-OPT students at a third party client site to ensure complete compliance, which means that the employer still controls the employment and supervises their training at the client site. The employer’s own supervisors should be available to answer questions in the event of a site visit,” Cyrus Mehta, NY based immigration attorney told TOI.

“Non-compliance of STEM-OPT rules can lead to termination of the student’s STEM OPT employment authorization, points out Mehta.

If site-visits become widespread and/or cumbersome, organisations will hesitate to hire and train STEM-OPT students, which casts a shadow on the future prospects of International students in US, sum up experts.

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