

EASY GUIDE TO HIRING FOREIGN GRADUATES

Do not let fear of the simple visa process prevent you from hiring the best and brightest graduates available. U.S. law provides several ways for employers to hire foreign graduates of U.S. universities. For example, USCIS issues tens of thousands of H-1B work visas each year. In addition, graduates of U.S. institutions in F-1 status are eligible for "practical training" and are hired regularly by U.S. employers.

The two most common mechanisms for hiring foreign graduates are:

I. **OPTIONAL PRACTICAL TRAINING:** For graduates in F-1 student status, Optional Practical Training allows up to twelve months of employment after graduation (for those holding Science, Technology, Engineering, or Math ("STEM") degrees, may get 24 additional months). The student must obtain permission from the university, and a work authorization card from USCIS. The university can provide additional information.

Timing: F-1 Graduates can begin working upon the effective date of the work authorization card.

Cost: No cost to employer. Student pays a nominal filing fee to USCIS to get card.

Employer Obligations: Treat employees on practical training just like other U.S. employees in terms of pay, discipline, termination, etc. A brief jointly-developed training plan is required for STEM extensions.

II. **H-1B VISAS:** This is an extremely popular work visa. It is available to foreign nationals 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. Allows employment for 6 years, or longer. The employer must submit an application to USCIS. **Approvals can take as little as fifteen (15) days.**

Employer Obligations:

- There is no need to advertise the position, and no need to determine if U.S. workers are available to fill the position.
- All Employers must post a notice for ten days at the worksite stating that the employer is hiring an H-1B worker, providing information about the job. This is NOT an advertisement. It is just a notice.
- Employers must pay the same wage and benefits provided to U.S. workers in similar jobs. May need to pay return transportation in some circumstances.

Timing: Normal processing times can take several months. However, USCIS has special "premium processing" which guarantees processing in 15 days, but requires an extra \$1,225 filing fee.

Cost: USCIS' normal filing fee for private employers is \$460, plus a \$1,500 "training fee", plus a "fraud prevention" fee of \$500. (NOTE: University employers, primary/secondary schools and certain governmental and non-profit research organizations do not pay the "training fee". Employers with 25 or fewer employees pay only \$750 "training fee"). Employers with 50 or more employees and more than 50% of workforce in H or L status, additional fees apply.

H-1B Cap: USCIS issues 85,000 new H-1B approvals each year (USCIS year—Oct. 1 through Sept. 30). Graduates with U.S. advanced degrees have special allocation of 20,000 H-1Bs out of the 85,000 quota. USCIS accepts cases beginning April 1 for Oct. 1 H-1Bs. Exceptions to the cap: University jobs; non-profits affiliated with universities; non-profit research organizations; H-1B extension with same employer; H-1B transfer to new employer. Citizens of Chile and Singapore have a special allocation of H-1Bs.

Other visa options may be available (for example TN for Canadians or Mexicans working in certain jobs; E-3 visa for Australians in professional positions, and other possible options)

Questions: Contact McCandlish Holton Immigration Practice Group – Mark Rhoads (mrhoads@lawmh.com) 804-775-3824; Helen L. Konrad (hkonrad@lawmh.com) 804-775-3825; Jennifer A. Minear (jminear@lawmh.com) 804-775-3822; David E. Gluckman (dgluckman@lawmh.com) 804-775-3826; Jonathan L. Moore (jmoore@lawmh.com) 804-775-7227; Crystal Malik (cmalik@lawmh.com) 804-775-3811. 1111 East Main Street, Suite 2100, Richmond, VA 23219.