Guide to OPT Employment Rules

On April 8, 2008, the United States Customs and Immigration Service (USCIS) issued a ruling that F-1 international students participating in Optional Practical Training (OPT) cannot be unemployed during their year of OPT for a total of more than 90 days.

CONSEQUENCES FOR THOSE VIOLATING RULE

- The regulations are very clear: Any F-1 student who has accrued more than 90 days of unemployment during their year of OPT is OUT OF STATUS.

- This rule increases the chance that an international student on OPT who is returning from a trip outside of the US will be refused entry if he/she cannot furnish proof of employment. Though this especially applies to students who are several months or more into their OPT, any F-1 student travelling outside of the US while on OPT now faces a greater risk that they will be refused re-entry without a letter from an employer.

- In respect to any future immigration-related applications, if the US Department of Homeland Security determines that an applicant had in the past violated the 90-day OPT unemployment limit while in F-1 status, such a determination could provide grounds for rejection of the application, whether it be for an H-1B work visa, Green Card or another OPT.

HOWEVER,...

... it is primarily your responsibility to keep track of your periods of employment and unemployment. Therefore, if you are unemployed, we recommend that you keep documents that prove you have been actively searching for a job.

DEFINITION OF EMPLOYMENT:

Students on OPT can help themselves remain in compliance with the 90-day unemployment rule by being aware of how USCIS defines the term “work”. Here are the types of work that constitute employment while on OPT:

- Regular paid employment for at least 20 hours per week in a position directly related to the student's program of study.

- Students may work for multiple employers, as long as it is directly related to the student's program of study.
• **Payment by multiple short-term multiple employers.** "Students, such as musicians and other performing artists, may work for multiple short term employers (gigs). The student should maintain a list of all gigs, the dates and duration. The student should maintain a list of all gigs, the dates and duration."

• **Work for hire.** "This is also commonly referred to as 1099 employment where an individual performs a service based on a contractual relationship rather than an employment relationship. If requested by DHS, students should be prepared to provide evidence showing the duration of the contract periods and the name and address of the contracting company."

• **Self-employed business owner.** "Students on OPT may start a business and be self-employed. The student should be able to prove that he or she has the proper business licenses and is actively engaged in a business related to his or her degree program."

• **Employment through an agency.** "Students on post-completion OPT must be able to provide evidence showing they worked an average of at least 20 hours per week while employed by the agency."

• **Volunteers or unpaid interns.** "Students may work as volunteers or unpaid interns, where this practice does not violate any labor laws. The work should be at least 20 hours per week for students on post-completion OPT. A student should be able to provide evidence, acquired from the student's employer, to verify that he or she worked at least 20 hours per week during the period of employment."

**REMEMBER:**

• Keep documentation of your job history during your period of OPT, including job search documentation.

• Employment needs to be directly related to your major.

• Employment needs to be for at least 20 hours a week.

• If you are unsure about any of this information, ask an advisor!
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