

OUR PRACTICE

Students' Employment

Certain students may be authorized to work in the U.S. under special rules. In essence, F-1 and J-1 students may receive permission from the school to work "on campus," and F-1, J-1 and M-1 students may receive permission for "practical training" off campus, either before or after graduation, for 6 months to 18 months. Details are discussed below. We can help with all aspects of the process.

Nonimmigrants who are able to study incident to their status (which includes the principal alien worker in most work-authorizing classifications and the spouse and child of a principal alien in almost any classification) may not work in connection with that student activity. Thus, sometimes it becomes advisable for a dependent (i.e., an H-4 spouse) to change to F-1 status in order to be able to work on or off campus while in school.

Even students who have completed their course of study and are working off campus must continue to notify the Designated Student Officer for the school with the current I-20 concerning any change of name, residence address, and employment.

Employment of F-1 Students

F-1 students may work in six situations. Each involves, to some extent, the school's Designated Student Officer (DSO, the foreign student advisor), who annotates the student's Form I-20 and/or issues a certification using Form I-538 and who makes an appropriate annotation in the "SEVIS" system. In each case the employment may be up to 20 hours per week when school is in session and full-time when not in session.

- **On-Campus Employment**— with only the DSO's authorization on the I-20, the F-1 student may work (1) on the school's premises, either for the school or for a commercial firm providing services directly to students (i.e., bookstore, cafeteria) or (2) at an off-campus location educationally affiliated with the school when the employment is an integral part of the student's educational program.
- **Severe Economic Hardship Employment**— After the student's first academic year, he may file Form I-765 to request from the immigration service ("USCIS") an employment authorization document (I-766) in one-year increments based on severe economic hardship caused by circumstances beyond the student's control and unforeseen before becoming an F-1 student. Circumstances may include, for example, loss of financial aid or on-campus employment, fluctuations in currency value or exchange rates, tuition or living expense increases, erosion of sources of financial support, and medical bills.
- **Curricular Practical Training**— After the student's first academic year, the DSO may authorize the student's employment off-campus as part of a program connected with the student's academic program (commonly called "co-op" or "work/study"). The annotated I-20 is the work authorization document.
- **Optional Practical Training**— Up to 90 days before completion of the student's first academic year, he may file Form I-765 to request from USCIS an employment authorization document (I-766) for a total maximum of one year for off-campus employment, to begin no earlier than completion of the first academic year. The employment is supposed to be related to the field of study (as the DSO certifies generally on Form I-538), and the student may switch employers during a period of authorization without any further approval. While in the past there was no apparent monitoring of what kind of jobs students undertook in practical training, immigration authorities appear to be finding violations, when encountered, by students whose work is not related to the academic field of study. The one-year aggregate allotment may be used before and/or after completion of studies, either all at once or in

stages for specific periods requested (such as 3 months for the summer). The application should be filed about 4 months before the desired beginning date to allow time for processing, and it can be filed no later than the date of completion of studies (i.e., graduation). Many students try to save as much optional training for after graduation as possible, to allow unrestricted employment authorization and thus the chance to find, and become indispensable to, a chosen employer who can then pursue H-1B status and permanent residence for them. But those tempted to "load up" on curricular practical training before graduation should note that using more than 11 months of curricular practical training makes one ineligible for optional practical training. Happily, a student becomes eligible for a new 12-month allotment upon graduation from each course of study and moving to a higher educational level. The mechanics of SEVIS make it difficult for a student to work a full year before beginning the new academic program. Students in post-completion practical training should be careful to avoid gaps in employment that could trigger loss of status.

- **Internship with an International Organization**— A student may apply to INS on Form I-765 for employment with a "recognized international organization" with the organization's certification and a DSO-endorsed I-20.
- **Emergent Circumstances** —USCIS has reserved the right to designate special situations for employment authorization, and it has invoked it only once for students from certain Asian nations whose currencies were rapidly devalued in 1998.

Employment of J-1 Students

J-1 students may work on-campus with only "responsible officer" approval by annotation on the Form DS-2019, which is the authorization document for the employer to verify.

Four categories of off-campus employment can be allowed with only responsible officer by annotation on the DS-2019 and a separate letter describing the specific employment (which is quite different from the scheme for F-1 off-campus employment, usually requiring USCIS approval). The four categories are:

The J-2 family members of a J-1 exchange visitor are uniquely eligible to use Form I-765 to apply for an unrestricted USCIS employment authorization card (I-766).

Employment of M-1 Students

M-1 students may use Form I-765 to apply to USCIS for off-campus employment between 60 days before and 30 days after completion of studies. The DSO must certify that the employment is not available in the student's home country. The period of authorized employment on the USCIS-issued I-766 will be limited to one month for four months of full-time study completed, with an aggregate maximum of 6 months.

How We Can Help

We assist institutions and employers to seek USCIS or State Department designations of students or exchange programs, to establish systems for compliance with complex government rules for such programs, to help students of exchange visitors know and comply with their rules and obtain work authorization and other benefits that may be available, and to work through the complex individualized problems that inevitably arise. We assist business, institutions, family and friends in clarifying arrangements for students' activities and financial support in order to obtain visas and entry.

We help employers confirm that students are authorized to work under I-9 rules.

We help individuals document and clarify their nonimmigrant intent, financial support, and planned activities in making visa applications, seeking entry, and applying for change of status. We are frequently called upon by foreign student advisors and students to craft applications for change to student status after entry as a visitor. We also frequently advise and assist in efforts to overcome violations or failure to maintain student status.

We help students and exchange visitors and/or their family members to obtain and maintain work authorization where available. We provide advice about allowable activities and periods of stay, and we evaluate and pursue changes to other classifications and to permanent residence for those who wish to expand their range of activities and duration of stay.

- "Academic training" for an aggregate of 18 months before and/or after graduation (more is allowable to satisfy mandatory degree requirements, and 36 months is allowed for post-doctoral training). The responsible officer's letter must specifically identify the employer and type of work (which must indeed relate to the field of study), and a new letter must be obtained for a change of employment.
- Unforeseen economic necessity for work that is an integral part of the academic program.
- Emergency circumstances under special State Department designation.
- Work pursuant to a scholarship, fellowship or assistanceship.

Important Links

- [Exchange Visitor Visas](#)
- [SEVIS \(Use top menu for International Students\)](#)
- [USCIS Form I-765](#)