

# Checklist for F-1 Students Transitioning to Cap-Subject H-1B Status

Many F-1 OPT foreign nationals have been approved for H-1B status effective October 1st in this year's H-1B lottery. Employers and F-1 workers should be careful during the transition from F-1 to H-1B status to ensure they maintain legal status and work authorization.

## The following is a checklist for F-1 students transitioning to H-1B status:



- 1. Make sure your H-1B petition is filed while you are still on F-1 Optional Practical Training (OPT) if at all possible.**

The cap-gap extension may bridge a gap between the end of the F-1 student's OPT and the start of their cap-subject H-1B employment on October 1. To be eligible, (1) the student must be in valid F-1 status at the time the cap-subject H-1B petition is filed, (2) the petition must be filed as a request for change of status rather than a request for consular processing, and (3) the petition must have an October 1 start date. It is the filing of Form I-129, not the electronic registration (i.e., lottery process), that confers the cap-gap extension. The filing of Form I-129 during the student's OPT extends both F-1 status and work authorization until October 1, whereas filing during the F-1 grace period extends just the F-1 status (but not work authorization) until October 1.



- 2. Stay within the OPT unemployment limits.**

F-1 students fall out of status if they exceed a certain number of days of unemployment while on OPT; this unemployment time continues to accrue during the cap-gap extension if the H-1B petition was filed while the student was on OPT. If the student is extending the 12-month-standard, post-completion OPT via the cap-gap extension, the 90-day unemployment limit continues to apply. If the student is extending STEM OPT via the cap-gap extension, the 150-day combined unemployment limit applies. The student must timely comply with all reporting obligations and make sure the Designated School Official (DSO) receives all updates within the required reporting timeframe.



- 3. If you are on STEM OPT, remember to complete both of your self-evaluations in a timely fashion.**

The employer must also sign, and both evaluations must be provided to the DSO no later than 10 days following their respective reporting deadlines (i.e., within 12 months of the approved STEM OPT start date and at the conclusion of the 24-month STEM OPT period).



- 4. Carefully consider any international travel during this transition.**

Traveling abroad while the H-1B petition is pending would cause the change of status request to be deemed abandoned by USCIS and, thereby, end the cap-gap extension. Apart from this, if there are other travel complications when the cap-gap extension was filed during the student's F-1 grace period, the student would need a new F-1 visa to return.



- 5. Coordinate with the DSO if you want an updated Form I-20, indicating the cap-gap extension.**

Sometimes, students will need an updated Form I-20 for employment, driver's license renewal, or other purposes. The cap-gap extension is automatic for those students who qualify, and SEVIS should automatically update as it receives data about the H-1B petition. If the SEVIS record does not update automatically, the DSO can request a data fix.

# Questions?

If you have questions, contact Berin Romagnolo or Nancy Noonan using the information below.



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Berin is a member of the firm's Immigration and Labor & Employment groups. Berin advises employers on all aspects of employing foreign nationals. She has extensive experience in business immigration and employment matters. She analyzes temporary work visa & greencard options available for a desired candidate or employee and advises on the process, timeline and cost involved. She also advises employers on I-9 compliance and other compliance topics particular to foreign workers, such as wage and hour, disciplinary measures, relocation concerns, and termination issues.



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Nancy's practice focuses on international trade and immigration issues. Nancy handles proceedings under the international trade and customs laws of the United States and under the US' immigration and nationality laws. Nancy routinely advises companies and individuals regarding the optimal strategies for the transfer of foreign nationals for temporary and permanent employment in the United States, and counsels companies in matters relating to the employer's legal obligations under immigration law. She is experienced in employment and family-based immigration, nonimmigrant visas, and citizenship issues.