

Briefing Information– OPT, H1B & TN

F-1 Optional Practical Training (OPT)

Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies (pre-completion or CPT) and/or after completing their academic studies (post-completion). However, all periods of pre-completion OPT will be deducted from the available period of post-completion OPT. See attached AGO [Fact Sheet for OPT F-1 process](#).

Quick Facts:

Typically an OPT lasts for 12 months. If an employer uses E-verify and the position is STEM related a student can have OPT extended up to 24 months. However, an employer who does not use E-verify system **cannot** extend the 24 month STEM OPT, even if the student has received it from another employer.

E-Verify is an electronic program through which employers verify the employment eligibility of their employees after hire. In short, employers submit information taken from a new hire's Form I-9 through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States. E-verify is not legally mandated for employers to use. WSDOT and most Washington State agencies do not use the E-verify system, per direction of AGO. Agencies who do use it are contractual required to.

H1B

The H-1B program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty, or its equivalent. H-1B specialty occupations may include fields such as science, engineering and information technology. This means that the classification the employee needs to have a requirement of a BA or higher or its equivalent in the specialty occupation – usually STEM field. Our Transportation Engineer classification would be eligible but a Transportation Technician position would not.

Please note the H1B program is a lottery process. See attached [AGO Fact Sheet for H1B process](#).

Quick Facts:

H-1B Cap: The current annual cap on the H-1B category is 65,000. H-1B petitions submitted by Higher Education employers are not subject to the annual cap. Neither are H-1B extensions, H-1B transfers (H-1B petitions for prospective employees who are currently employed in H-1B status with another employer), or amended petitions.

Once the cap number has been reached, the USCIS will not accept any new cap-subject H-1B petitions for that Fiscal Year (October 1 – September 30). USCIS resumes acceptance of cap-subject H-1B petitions on April 1, 6 months prior to the first day of the new federal fiscal year (October 1), but with a start date of H-1B employment no earlier than October 1.

Some petitions are also exempt from the cap under the advanced degree exemption provided to the first 20,000 petitions filed for a beneficiary who has obtained a U.S. master's degree or higher.

Currently, employees are able to stay on H1B status for 3 years and then can extend for an additional 3 years (6 years total).

Timeline of Internal H1B Petition Process

If the position meets the above, with **appointing authority approval**, the division/office can petition for employer base sponsorship through the H1B lottery. Below is an overview of the petitioning process:

- In January, Attorney General's Office will reach out to agencies for petition names that we will be requesting for H1B, usually with a due date of the first week of February. (Rafeeah Sok will email HR Managers requesting for names.)
- AGO will submit documents for pre-registration on agency's behalf.
- Registration fee is \$10. We are also responsible for any attorney fees estimated to be at a minimum \$2,500.
- USCIS will notify applicants by March 31.
- If an employee is selected AGO and I will work to gather required information to officially file the petition for H1B to USCIS.
- Filing starts April 1.
- October 1 will be employee first day under H1B visa.
- The cost of an H1B to include application and attorney fees is a minimum of \$7,000, the cost can go up depending on the complexity of the case.

TN Professionals

The TN visa classification is part of the Visas for Canadian and Mexican USMCA Professional Workers. The TN Professionals under NAFTA-USMCA enables Canadian and Mexican citizens to enter the United States to engage in professional business activities on a temporary basis.

On July 1, 2020, the United States-Mexico-Canada Agreement (USMCA) replaced the North American Free Trade Agreement (NAFTA). The criteria for TN admission under the USMCA is the same as under NAFTA. Whereas TN admission under NAFTA was governed by the list of Professionals in Appendix 1603.D.1 to Annex 1603 of NAFTA, TN admission under the USMCA is governed by the list of [Professionals in USMCA Chapter 16 Appendix 2](#).

Among the types of professionals who are eligible to seek admission as TN nonimmigrants are accountants, engineers, lawyers, pharmacists, scientists, and teachers. For more information about TN Professionals please refer to the following website. <https://www.uscis.gov/working-united-states/temporary-workers/tn-nafta-professionals>

Quick Facts:

Canadian citizen, are not required to apply for a TN visa at a U.S. consulate.

A person may establish eligibility for TN classification at the time they seek admission to the United States by presenting required documentation to a U.S. Customs and Border Protection (CBP) officer at certain CBP-designated U.S. ports of entry or at a designated pre-clearance/pre-flight inspection station. They must provide the following documentation to the CBP officer:

- Proof of Canadian citizenship;
- Letter from your prospective employer detailing items such as the professional capacity in which you will work in the United States, the purpose of your employment, your length of stay, and your educational qualifications; and
- Credentials evaluation (if applicable), together with any applicable fees.

If a CBP officer finds them eligible for admission, they will be admitted as a TN nonimmigrant.

Additionally, an employer may choose to file on behalf of a Canadian citizen who is outside the United States by submitting Form I-129, Petition for Nonimmigrant Worker to USCIS. Internally, we are required to work with the AGOs to support this process.

Initial period of stay is up to 3 years, U.S. immigration officials can decide to admit you for a shorter period. A request for an extension can be submitted six months prior to the date of expiration. The agency can request extensions, in up to 3-year increments for each extension, indefinitely.