New H-1B Regulations May Affect OPT Students

Last week, two new U.S. government regulations were released that may affect students on OPT or AT whose employers plan to sponsor them for H-1B status.

- **Strengthening the H-1B Nonimmigrant Visa Classification Program** [1] will make significant changes to the H-1B program, including a change that will limit eligibility for H-1B status by requiring a more direct relationship between an academic degree and the H-1B position in order to meet H-1B qualifications. This regulation was issued by DHS and will take effect on December 7, 2020.

- **Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States** [2] restructures the way in which employers determine required wages under the H-1B program. In many cases, this new regulation will result in a considerably higher required minimum salary. This regulation was issued by the Department of Labor on October 8, 2020, and took effect immediately.

Since both regulations were issued as “interim final regulations”, employers and other members of the public have the opportunity to provide feedback, but comments will not delay the implementation of these new regulations. There are links on the above webpages where comments can be submitted. These regulations have already been challenged in court [3] by a variety of employers and associations, including the University of Michigan.

Should you have any questions about the impact of these regulations on your ability to obtain H-1B status, please consult with your employer.

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Links