

BAL POLICY UPDATE: STEM OPT SITE VISITS

July 30, 2019

Since 2016 when the current regulations governing the STEM Optional Practical Training (OPT) extension were issued, the Department of Homeland Security (DHS) has maintained the right to conduct worksite visits to ensure that employers and F-1 students authorized for STEM OPT are in compliance with program requirements. While the agency has not exercised that right in the past, DHS has reportedly begun conducting inspections. It is important that employers of STEM OPT students are prepared for these visits.

What is the goal of these inspections?

DHS has stated that site visits are intended to assess whether employers are conducting practical training in accordance with the information laid out in each student's Form I-983 (Training Plan for STEM OPT Students). U.S. Immigration and Customs Enforcement (ICE), which houses the Student and Exchange Visitor Program (SEVP), is responsible for conducting the site visits. It should be noted that ICE officers may also refer other violations they observe during the visit to other agencies.

What notice is given to employers of a site visit?

DHS generally provides 48 hours' advance notice. However, DHS does not have to provide notice if a complaint or other evidence of noncompliance triggered the site visit. The agency will likely give notice via e-mail of the date of the visit and request documentation relating to STEM OPT students. ICE may also simply request documentation over email or phone in lieu of a site visit. If contacted by ICE, please notify your BAL attorney.

How should my company prepare for a possible site visit?

Employers should make their reception and security personnel aware of the possibility of a site visit, and direct them to notify designated points of contact within the company when ICE officers arrive, and ask the officers to provide their business card and ID. Employers should designate appropriate personnel to act as a contact point for ICE officers upon arrival, who will be present throughout the site visit and document what occurs during the visit.

Officers will likely ask to speak to the managers or supervisors of the STEM OPT students, and may also ask to speak to the students themselves. Managers and supervisors should be aware of the information provided in each student's Form I-983 and be prepared to answer questions about the training opportunity. ICE may allow a BAL attorney to be present, by phone or in person, but has no obligation to do so. If a STEM OPT student is placed at a third-party worksite, employers should be aware that ICE officers may conduct their visit at that site.

What are the consequences if ICE finds program violations?

The regulations do not prescribe specific penalties for employer violations, but violations do create risks for the student. The Form I-983 requires students to certify their understanding that DHS "may deny, revoke, or terminate the STEM OPT of students whom DHS determines are not engaging in OPT in compliance with the law, including the STEM OPT of students who are not, or whose employers are not, complying with this Plan."