

OPT Instead of H-1B

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Clearly, the current economic climate is a major factor in the low demand for H-1B visas. As of July 23, 2010, 23,000 regular petitions and 11,300 master's degree exemption petitions have been received by USCIS. Last year the 65,000 cap was not reached until late December 2009, approximately eight months into the filing period. In the couple of years before that, the 65,000 cap was reached within a few days of the initial April 1 filing date.

Some employers have an alternative to the H-1B – hire a recent college graduate through OPT/STEM. A Department of Homeland Security (DHS) rule permits a graduated student (F-1) visa holder to work pursuant to Occupational Professional Training (OPT) for one year. Thereafter, the individual may extend their OPT for 17 months if he/she has a STEM (science, technology, engineering or mathematics discipline) degree. In this manner, an employer does not need to incur the legal and filing fees, as well as comply with the public access requirements of the H-1B program. For an employer to employ an individual via STEM, it must participate in the E-Verify program. Those employers considering E-Verify should carefully consider its requirements. Employers must enter into a Memorandum of Understanding (MOU) with the DHS, which requires employers to: (a) post a E-Verify poster and the Office of the Special Counsel anti-discrimination poster in locations that are accessible to prospective applicants and new hires; (b) agree to allow DHS to make periodic visits to the employer for the purpose of reviewing E-Verify-related records (i.e., I-9 forms and SSA and DHS confirmation records).