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JUL 24 2019

# STEM OPT Worksite Inspections: What Employers Need to Know

UNITED STATES

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## At a glance

- *DHS has begun conducting on-site inspections of F-1 STEM optional practical training (OPT) employment.*
- *The purpose of the inspections is to review employer compliance with STEM OPT regulations and with individual training plans for specific foreign nationals.*
- *Companies that employ F-1 students pursuant to STEM OPT should plan in advance for a potential DHS site visit.*

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## The issue

The Student and Exchange Visitor Program (SEVP) unit of U.S. Immigration and Customs Enforcement (ICE) has launched on-site inspections of the STEM Optional Practical Training (OPT) employment of certain F-1 trainees.

Though ICE has had the authority to make site visits since regulations governing the STEM OPT program were revised in May 2016, the agency has not begun to conduct inspections until now.

The following are answers to frequently asked questions about STEM OPT site inspections, based on reports of the visits conducted thus far. These FAQs may be updated as ICE conducts more visits.

If your company is contacted by ICE, please reach out to your designated Fragomen professional as soon as possible to discuss preparation for the visit.

### Why does ICE conduct STEM OPT site visits?

Program rules authorize ICE to conduct site visits to verify that employers are complying with STEM OPT requirements and meeting the obligations of Form I-983 training plans. In general, ICE will use the visit to ensure that your organization is carrying out a structured and guided work-based learning experience consistent with the regulations and with the specific training plan completed and signed by the organization.

The inspection may include individual interviews with company personnel, a review and discussion of the foreign national's training plan and its implementation, and a review of his or her skills and degree in relation to the STEM degree. ICE may also request to view F-1 trainee workspaces or receive a tour of the premises.

Consistent with the regulations, ICE may review whether the duties, hours and compensation of STEM OPT trainees are commensurate with those of similarly situated U.S. workers in the company. In doing so, the agency could request that your organization provide details and documentation on how it determines wages for employees.

While this type of site visit should focus only on STEM OPT, and is not intended to be used for other workplace enforcement, if evidence of other immigration-related violations is found during the site visit, ICE may address the violation or refer it to the appropriate agency or ICE unit.

### Will ICE notify my organization in advance of a STEM OPT site visit?

Typically yes. In general, ICE is required to provide 48 hours' advance notice of a STEM OPT site visit. However, no notice is required where a complaint has been lodged with ICE, or where the visit is the result of evidence indicating noncompliance with STEM OPT program rules.

The SEVP division of ICE has been sending emails directly to the managers of F-1 STEM OPT trainees with an attached Notice of Site Visit. The SEVP communications contain:

- The date of the scheduled visit;
- A list of STEM OPT F-1 foreign nationals whose training has been selected for inspection;
- A request for a copy of each named F-1 trainee's Form I-983, Training Plan for STEM OPT Students; and

At each worksite where an F-1 STEM OPT foreign national is being trained, your organization should designate a point of contact, such as an HR or immigration manager, to receive ICE officers. Make sure to instruct receptionists and security personnel of the possibility of a site visit and whom to contact when an officer arrives. Instruct them to request the officer's business card, and advise them that officers should not be permitted to tour the worksite or speak to employees before the designated company representative is notified.

STEM OPT trainees and their managers should also be advised about the possibility of an ICE inspection and what to expect during the visit.

**Will my organization be able to correspond with ICE before the site visit? Will we be able to involve our immigration counsel?**

For a routine visit, your organization will likely be asked to submit the requested Forms I-983 training plans and related documentation before the site visit. At that time, you may be able to obtain further details from ICE, including the specific time of day of the inspection, and its expected scope.

You may ask ICE for your Fragomen attorney to be present during the site visit either in person or by phone. In making the request, you should explain that having the company's immigration counsel present or available by phone will help the employer respond fully and accurately to the officer's questions and requests for information. Thus far, ICE has permitted attorney presence, but may not consistently do so.

**Who will conduct the visit from ICE?**

Site visits have so far been conducted by officers from the SEVP unit of ICE. More than one ICE officer may be present.

When an officer appears at your company premises, you should ask to see his or her identification and business card. If you have any concerns about the visitor's credentials, you may call the telephone number on the business card to verify their identity. You should note the officer's name, title, and contact information for your company's record of the site visit.

**Which employees in our organization should be made available for the visit? What if an employee is unavailable on the date of the visit?**

ICE has thus far requested to speak directly with a company's immigration manager, managers/supervisors of the selected STEM F-1 trainees, and with the signatory of their Form I-983 training plans.

ICE may also ask to meet with the STEM F-1 trainees, though may not always do so. However, the foreign nationals may be present during the inspection if they and the company so choose.

If a company employee selected for an interview is not available on the scheduled date, you should address the issue with ICE. The agency may request a follow-up phone call or other communication with the employee, or may determine it can complete the investigation with the available personnel.

**Should a company representative accompany the ICE officer during the site visit? Should the representative take notes?**

Yes, a company representative should be present throughout the site visit. ICE may decline a company representative's request to be present during individual ICE interviews with managers and other personnel, but the representative should remain available.

During the visit, the representative should take detailed notes, including the name, title and contact information of each officer; the names and titles of individuals the officer interviews; the questions asked during interviews; any company documents provided to the officer; the worksite areas visited by the officer; and any photographs taken by the officer. If company documents are provided to ICE, the company representative should be sure to list the documents provided and retain copies. If the officer takes photographs of the premises, the representative should ask for copies of them.

**Our organization has a policy against allowing unaffiliated individuals to tour or photograph our premises. If the officer asks to see or take pictures of the worksite, must we cooperate?**

Fragomen recommends that employers comply with reasonable requests to examine and photograph the employer's premises or work area. However, if your company has a strict policy against tours or photographs, you should explain that to the officer.

**What kinds of questions can we expect from the ICE officers?**

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- How the role relates to the trainee's degree and academic program;
  - Why the trainee is qualified for the role;
  - What qualifications managers look for when hiring for similar positions;
  - The nature of the manager's supervision and training; and
  - Whether the trainee is placed at a third-party worksite.

**If an F-1 STEM OPT trainee is placed at a third-party site, could ICE conduct a visit at that site?**

Employers are permitted to place F-1s on STEM OPT at client and customer worksites, provided that all STEM OPT training obligations are met. The visit could take place at the third-party worksite. If your company has placed a STEM F-1 offsite, the company should communicate with vendors and/or clients to discuss the possibility of an ICE visit.

In offsite placement scenarios, ICE officers are likely to ask questions about the employment relationship between your organization and the STEM F-1 trainee, in order to verify that your organization is supervising and training the foreign national in a manner consistent with STEM OPT program rules.

**How long will the site visit last?**

The visit should generally last from 1 to 1.5 hours. The length of the entire ICE site visit will vary by how many foreign nationals are selected for the investigation, as well as how much company information (including, in some instances, requests to view workspaces or for a tour of the premises), is requested by ICE.

**What happens after a site visit is completed?**

If as a result of the inspection the agency determines an employer must submit updated or corrected information, ICE will generally request that information in writing from the employer.

In some cases, if officers were not able to speak to everyone they deemed critical for the investigation, or obtain all of the sought information, they may engage in follow-up communication with the organization.

**What are the penalties for noncompliance with STEM OPT rules?**

The Form I-983 provides notice of some potential enforcement actions for STEM OPT noncompliance, including termination of the student's STEM OPT employment authorization. Thus far, it is not clear what level of violation would trigger such action by ICE.

*This alert is for informational purposes only. If you have any questions, please contact the immigration professional with whom you work at Fragomen.*