

## **RECOMMENDED POLICIES AND PROCEDURES WHEN HIRING FOREIGN NATIONALS ON A WORK AUTHORIZATION FOR F-1 OPTIONAL PRACTICAL TRAINING (OPT)**

Revised, September, 2012

Optional Practical Training (OPT) allows foreign national students on F-1 visas to gain work experience in the U.S. before and/or after the completion of their degree program. The student maintains their F-1 visa status during their work period and the work experience must be related to their major field of study. Often students are hired on OPT status by Auburn University, potentially benefitting both the University and the student. It must be recognized, however, that federal immigration regulations covering OPT can be complex. The foreign national must obtain work authorization from the USCIS based on a recommendation from OIE. Student eligibility, SEVIS updating, status reporting and other federal requirements make it imperative the student and the hiring department work in **close cooperation with the Office of International Programs** during the hiring process. To not do so could endanger the legal status of the student and possibly their future employment prospects.

**Federal regulation limits OPT employment at Auburn University to 12 months.** Typically, however, individuals working on OPT are hired into permanent positions. Therefore, there are two processes going on simultaneously: (1) candidates are applying for OPT status for work authorization and/or entering into the H-1b application process to obtain a more long-term employment authorization; and (2) the University's standard hiring procedures.

While a prevailing wage is not necessary for OPT work authorization, it is necessary when hiring on an H-1b visa.

## General Hiring Considerations for OPT

Because OPT candidates are typically hired into permanent positions, the general AU hiring policies apply. Whether the hiring process involves a faculty member, post-doc, administrative/professional, or University staff position, there are several steps that must be completed:

1. There must be a candidate selection process. In all cases, Auburn University policies and procedures must be followed.
2. There must be a written offer of employment sent to the finalist with the conditions of employment, including salary. In the case of a foreign national, the letter should not be sent until OIP is contacted.

Faculty - salaries have to be in line with the actual wage per discipline.

Post-doctoral fellows - must follow Provost Office guidelines.

Administrative/professional, staff positions - a salary referral must be requested from HR.

The salary referral will be provided in compliance with AU policies and procedures.

NO offer can be made until the standard employment approval process has been completed.

## OPT Work Authorization

Obtaining OPT work authorization from the USCIS requires several distinct and necessary steps.

1. Candidates should talk to their advisor at OIP to orient them in the application process.
2. Candidates must apply themselves to the USCIS for work authorization. It normally takes **3-6 months** for authorization processing. The processing fee is \$380, payable by the candidate to US Department of Homeland Security.
3. All foreign national employees must go to OIP to receive employment counseling and complete the Alien Employment Verification & Tax Form. **The employment date cannot precede the date on the employee's Employment Authorization Document (EAD) card.**

## Administrative/Professional and Staff Positions

1. If during the interview process a foreign national candidate is one of the top candidates and indicates they will need sponsorship for an H-1b visa in the future, it is recommended that the hiring department immediately **request a prevailing wage** from OIP if they wish to consider sponsoring an H-1b. If the prevailing wage is in excess of the available salary

support, applicants requesting an H-1b sponsorship may be disqualified based on insufficient funds. The department still has the option of hiring individuals utilizing the F1-OPT work authorization at a lower rate, provided there is a clear understanding between all parties that the employment will end with the expiration of the F1-OPT. (Additionally, employees with less than one year left on their work authorization would not be entitled to any fringe benefits. However, an exception to this may be requested if the department is sponsoring the person for an H-1b. Please contact OIP for guidance.)

2. Once the Final candidate has been identified, HR should be contacted to request a salary referral. The salary referral will be provided in compliance with AU policies and procedures. If the applicant selected as the Finalist candidate is a foreign national, and the department wishes to sponsor them for an H-1b visa, **but** the prevailing wage is in excess of the standard referral rate, the hiring department has the option of disqualifying a candidate if the prevailing wage is in excess of the standard referral rate or available funds. Alternately, the hiring department may request an exception from the Director of Employment Services. The review of this request will be handled as any other exception request. **No offer can be made** until the salary issues are resolved and the standard employment approval process has been completed.
3. The timing of the prevailing wage request and its relation to the filing process need to be kept in mind. Prevailing wage requests are sent to the U.S. Department of Labor via U.S. mail. Currently response time is approximately four to eight weeks. For a fee of approximately \$175 (subject to change), a prevailing wage can be obtained through Fisher & Phillips in approximately one to two weeks. **A prevailing wage is only good for the year July 1 through June 30.** Therefore, another prevailing wage must be requested in connection with an anticipated H-1b petition if the original prevailing wage was requested prior to June 30 but the hire date will not occur until July 1 or after. If another prevailing wage has to be requested after the date of hire and it comes back at a higher rate, the department will have to request an out-of-cycle pay increase for that individual through their Dean or the Assistant Vice President for Human Resources. The Executive Vice President of the University must approve requests for out-of-cycle pay increases (Provost's approval is also required in academic areas). If the request is not approved, then the individual will be dismissed at the conclusion of their 12 month OPT period, unless they are STEM extension approved.
4. After the formal offer is made, the standard foreign national hiring procedures apply, with the following paperwork sent through the required channels to Human Resources:
  - PAF Authorization Form
  - Personal Data Form
  - A-4 for Alabama Tax w/h
  - Alien Employment Verification & Tax Form
  - I-9 Form with copies of supporting documents attached(Must be processed within 3 days of hiring date, with no exceptions)

- W-4 Form
  - Copy of Social Security card or proof of application\*
  - Direct Deposit Form
5. This paperwork must arrive in Human Resources no later than the third day of hire in order to ensure compliance with Federal requirements regarding employment eligibility documentation. Failure to meet the third day of hire deadline with the appropriate and duly completed documentation will result in the employee not receiving pay in a timely manner. Missed deadlines will result in the employee being paid on the next available pay cycle.
  6. The hiring department and employee must remain in contact with OIP as the H-1b petition process moves forward. For additional information regarding H-1b and LPR processes, please contact OIP.

### **Faculty Positions**

1. For faculty positions, the F-1 OPT often acts as a bridge to an H-1b and ultimately a permanent residency. Therefore, in anticipation that most faculty searches will include foreign national applicants, it is strongly advised that all recruitment advertising be compliant with the requirements for PERM applications. The following process should be followed for faculty with undergraduate/graduate teaching responsibilities.

The Department of Labor regulations allow for universities to use a special labor certification process for certain foreign national professors. This process is called “special handling.” Special handling provides significant advantages for the processing of labor certifications. Specifically, the recruitment and selection process that must be undertaken and documented by the university is much less burdensome under special handling. Under special handling the university is permitted to use the recruitment conducted when the foreign national was originally hired, instead of having to conduct another recruitment process.

In order to take advantage of the special handling process, there are certain steps you must remember:

1. Special Handling Requirements:
  - a. Foreign national is employed in a teaching position;
  - b. Foreign national was selected for the position following a competitive recruitment and selection process;
  - c. The recruitment for the position included at least one **print** advertisement placed in a national professional journal, for example *The Chronicle of Higher Education*; **FULL** descriptive ad should be run, **NOT** just a link to the full ad (certain on-line ads are now acceptable)
  - d. The labor certification application must be filed within 18 months of selecting the foreign national for the position. Due to the 18 month filing deadline, it is important that the permanent residence process be started for the foreign

national at least 12 months after the foreign national is selected for the position. If the permanent residence process is started as late as 16 months after the person is selected, it will be impossible to file the application within the 18 month window.

*Note: If all the requirements listed above are not met, the faculty member may still be eligible for special handling as long as the position involves teaching duties. If 18 months have passed since the foreign national was selected and/or the recruitment is defective, the competitive recruitment and selection process can be re-done and still file the case under the special handling provisions.*

Additional information regarding special handling:

2. Documentation Needed: In order to file a special handling case, Auburn University must be able to provide the following information/documentation:
  - a. Recruitment Report:
    - i. Form A, Recruitment Plan;
    - ii. Form B, Applicant Worksheet;
    - iii. Form D, Recruitment Summary;
    - iv. Evidence of the total number of applicants and reasons why the foreign national is more qualified than each U.S. worker who applied;
    - v. Final report from the selection committee recommending the foreign national for the position
  - b. One Print Advertisement:
    - i. Print ad must be placed in a national professional journal. (On-line advertisements are **not** acceptable);
    - ii. Copy of the print ad must contain the name of the publication and date of publication;
    - iii. Print ad must state:
      1. job title;
      2. job duties, and
      3. job requirements
  - c. Offer letter to foreign national indicating that he/she was selected for the position.

(Please note: Auburn University is not required to submit this documentation with the application; however, this evidence should be provided to Fisher and Phillips, in case the case is audited, and also retained in Auburn University's records for 5 years.)
3. Filing Deadline: Must file for Special Handling Labor Certification case within 18 months after selecting the foreign national for the position.

For non-special handling situations (no teaching responsibilities or teaching responsibilities in Extension/Agricultural Experiment Station) the advertising requirements for PERM are as follows:

Mandatory:

1. 10-day internal posted notice;
2. 30-day job order with State workforce agency;
3. Two Sunday newspaper print ads or one newspaper ad and one ad in a professional/trade journal.

Three additional recruitment steps, which may include:

1. job fair(s);
  2. Auburn's web site job opportunities pages;
  3. Internet job search website;
  4. on-campus recruiting at local college or university;
  5. trade or professional organizations;
  6. private employment firms;
  7. employee referral program;
  8. a notice of the job opening at a local college/university campus placement office;
  9. local and ethnic newspapers; or
  10. radio and television advertisements
2. It is recommended that the hiring department request a prevailing wage from OIP at the beginning of the search in anticipation of considering foreign nationals. OIP will require a copy of the approved recruitment advertisement in order to provide the prevailing wage. If the prevailing wage is in excess of available funds for the position, the hiring department has the option of disqualifying a candidate from further consideration.
  3. The timing of the prevailing wage request and its relation to the filing process for the H-1b need to be kept in mind. A prevailing wage is only good for the year July 1 through June 30. Therefore, another prevailing wage must be requested in connection with an anticipated H-1b petition if the original prevailing wage was requested prior to June 30 but the filing date will not occur until July 1 or after. It is critical that the department and the Dean's Office work closely with OIP during this process.
  4. The department must inform OIP prior to interviews being scheduled if foreign national candidates are being considered. This will give OIP an opportunity to determine if there are any work authorization issues which might disqualify the identified foreign national candidates before an invitation to interview is extended.

5. The standard foreign national hiring procedures apply with the following paperwork sent through required channels to the Provost's Office for forwarding to Human Resources:
  - PROV 101
  - PROV 100
  - Academic Personnel Authorization Form
  - Personal Data Form
  - A-4 Form for Alabama Tax w/h
  - Alien Employment Verification & Tax Form
  - I-9 Form with copies of supporting documents attached  
(Must be processed within 3 days of hiring date, with no exceptions)
  - W-4 Form
  - Copy of Social Security card or proof of application\*
  - Direct Deposit Form
6. This paperwork must arrive in Human Resources no later than the third day of hire in order to ensure compliance with Federal requirements regarding employment eligibility documentation. Failure to meet the third day of hire deadline with the appropriate and duly completed documentation will result in the employee not receiving pay in a timely manner. Missed deadlines will result in the employee's being paid on the next available pay cycle.
7. The hiring department and employee must remain in contact with OIP as the H-1b and other petition processes move forward. For additional information regarding H-1b and LPR processes, please contact OIP.

### **Post-Doctoral Positions**

1. If during the interview process it becomes apparent that a foreign national is one of the top candidates and the candidate indicates he/she will need sponsorship for an H-1b visa in the future, the hiring department must immediately request a prevailing wage from OIP if they wish to consider sponsoring an H-1b. If the prevailing wage is in excess of the available salary support, applicants requesting an H-1b sponsorship may be disqualified based on insufficient funds. The department still has the option of hiring the individual utilizing the F1-OPT work authorization at a lower rate, provided there is a clear understanding between all parties that the employment will end with the expiration of the F1-OPT. (Additionally, employees with less than one year left on their work authorization would not be entitled to any fringe benefits. However, an exception to this may be requested if the department is sponsoring the person for an H-1b. Please contact OIP for guidance.)
2. Salaries for Post-doctoral Fellows must follow established guidelines, yet be **at or above** the prevailing wage per discipline.

3. If the department will be sponsoring the person for an H-1b, the timing of the prevailing wage request and its relation to the filing process for the H-1b need to be kept in mind. **A prevailing wage is only good for the year July 1 through June 30.** Therefore, another prevailing wage must be requested in connection with an anticipated H-1b petition if the original prevailing wage was requested prior to June 30 but the filing date will not occur until July 1 or after. It is critical that the department and the Dean's Office work closely with OIP during this process.
4. After a suitable salary has been determined, the standard foreign national hiring procedures apply with the following paperwork sent through required channels to the Provost's Office for forwarding to Human Resources:
  - PROV 101
  - PROV 100
  - Academic Personnel Authorization Form
  - Personal Data Form
  - A-4 Form for Alabama Tax w/h
  - Alien Employment Verification & Tax Form
  - I-9 Form with copies of supporting documents attached  
(Must be processed within 3 days of hiring date, with no exceptions)
  - W-4 Form
  - Copy of Social Security card or proof of application\*
  - Direct Deposit Form
5. This paperwork must arrive in Human Resources no later than the third day of hire in order to ensure compliance with Federal requirements regarding employment eligibility documentation. Failure to meet the third day of hire deadline with the appropriate and duly completed documentation will result in the employee not receiving pay in a timely manner. Missed deadlines will result in the employee being paid on the next available pay cycle.
6. The hiring department and employee must remain in contact with OIP as the H-1b petition process moves forward.

\*Note: The Social Security Administration does not allow foreign nationals to apply for a social security card prior to 10 days after their arrival in the U.S. Timing of their arrival is therefore critical to insure the employee gets on payroll early enough to be paid on the first available payroll period.