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The Department of State has published a final rule governing J-1 trainees and interns.

Global Edition

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specifically for the Global Industry

DOS Publishes Interim Final Rule Regarding J-1 Trainees and Interns

Overview

After reviewing comments to its 2006 proposed rule, the Department of State has published an interim final rule (hereinafter "the Rule") regarding J-1 trainee programs. There is a 30-day comment period beginning on June 19, 2007 and the Rule will take effect July 19, 2007.

The program changes are in part influenced by a General Accounting Office report that expressed concern over the potential misuse of the existing trainee program. The State Department cites concerns that the trainee program was being misused as a vehicle to procure employment for foreign nationals who were unable to obtain H-1B status as well as a stepping stone to immigrant status.

The Rule is similar to the proposed rule in that it still eliminates the specialty/nonspecialty occupations distinction, establishes an internship program and regulates third party trainers. Additionally, the Rule now requires program sponsors to receive signed Form DS-7002 Training/Internship prior to issuing the DS-2019 form required to obtain the J-1 visa and also provides special rules for flight training.

Comments submitted in response to the proposed rule have resulted in a modification of the Rule in several ways, some of which include: amending the definition of intern to include post secondary students, eliminating the TOEFL requirement and replacing it with other means of verifying the J-1 candidate's English fluency, allowing web camera or videoconference interviews of candidates in lieu of an in-person interview, allowing third parties to conduct the candidate interviews if provided for in the agreement between

the trainer and the sponsor, and requiring site visits of the third party trainers by host sponsors where the trainer has not worked successfully with the sponsor previously and has less than 25 employees or less than three million dollars in annual revenue.

Definition of Trainee and Intern

Trainees must possess a degree or professional certificate from a post-secondary academic institution outside the U.S. and one year of related work experience acquired outside the U.S. Alternatively, a trainee can possess five years of work experience abroad in the occupational field. These requirements stem from the State Department's concern that the trainee have established connections to the home country to help ensure that the trainee returns to the home country to further the cultural exchange mission of the program.

Interns are a subcategory of the trainee program and allow both current students of a degree or certificate granting post secondary academic institution (which differs from the initial proposed rule) as well as those who have graduated within twelve months of the internship program start date to participate.

There is a specific prohibition on using this category for child care, elder care or any other type of patient care.

Program Duration and Repeat Participation

Trainee programs have a maximum duration of eighteen months, except for the hospitality and tourism industry, which has a maximum duration of 12 months. Trainee programs in agricultural fields also have a maximum duration of 18 months, as long as at least six months of that time involve classroom or

other studies. The maximum program duration for interns is 12 months. The maximum program duration for J-1s engaged in flight training is 24 months.

Interns can participate in multiple programs as long as they do so while in school or until one year after graduation. There is no limit to the number of programs in which trainees can engage, however, there is a two-year bar to repeat participation following completion of a J-1 training program.

Third Party Trainers

The Rule requires that the sponsor vet the third party organizations operating outside the U.S. and provides very specific guidance as to how this can be accomplished, including verifying that the organization has a Dun & Bradstreet identification number, an employer verification number (EIN) and a workers' compensation insurance policy. Specific obligations are imposed on the host organizations as well to ensure that the program is used for legitimate training programs that do not result in the placement of casual labor or the use of the program to obtain work for unskilled positions.

Conclusion

This ASAP serves merely as a summary of the Rule and does not get into every detail with complete specificity. Please contact a Littler attorney if you would like to discuss the Rule and its possible implications to your business in greater depth.