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BUSINESS | LITIGATION

Can I Start a Business While in the U.S. on a Student Visa?

The entrepreneurial spirit is alive and well in Massachusetts' colleges and universities. And international students in the United States on a F1 visa are a big part of that spirit. At The Jacobs Law, we receive many inquiries from entrepreneurs with an F1 visa into whether they can start a business, run a business, license their ideas or creations, or invest in their business. The answer is not always a simple one.

> ***Working for a for-profit company without pay is not considered volunteering, and is therefore forbidden for those with an F1 visa.***

In general, international students in F1 status are forbidden from "engaging in business." However, immigration law does not expressly forbid F1 visa students from establishing their own business because 'preliminary business planning' is not considered 'engagement'. Once the business is established, however, International Students are not permitted to operate their own business, engage in business, or receive revenue, compensation or salary. This is an extremely important distinction to understand, but one that is not so easily delineated.

Often International Students will ask whether they can 'run' their own business without receiving any compensation, revenue or salary. But consider this – Working for a for-profit company without receiving pay cannot be considered volunteering, and is therefore forbidden for F1 visa holders.

Through investments, International students can receive benefits from their company, without engaging in business. Immigration law allows International Students to invest in their own company and receive dividends. Such investment is entirely legal and permitted, provided that the F1 visa student files an income tax return. However, an F1 visa student still cannot engage in business without obtaining additional visa status.

How Can an F1 Visa Student Run Their Own Business Lawfully

There are several ways to obtain additional status for International Students who wish to operate or engage in their own business: Curricular Practical Training (CPT), Optional Practical Training (OPT), and H-1B are the most common.



Curricular Practice Training (CPT)

CPT will allow International students to receive work authorization, which will allow them to work for their own companies. CPT must relate to the students major and the course of study. CPT allows the student to work as many or as little hours as he desires.

Optional Practical Training (OPT)

OPT is similar to CPT in that it authorizes international students to work for their own business, provided the business is actively engaged in a business related to the student's degree program. Students must obtain an Employment Authorization Document (EAD) prior to applying for an OPT.

There are different guidelines for students who have elected OPT, depending on when they are completing the program in relation to their school studies.

Students engaged in OPT prior to completing their studies are only permitted to work 20-hours per week while school is in session. Students in this category must reapply for OPT status at each educational level and are generally authorized for 12-months.

Students engaged in OPT after completing their studies may work full-time. Students in this category who have graduated with a degree in science, technology, engineering or math must reapply for OPT status, but may be authorized for 17-months.

H-1B Visa

The H-1B visa allows a student to continue his or her career working for his/her company, after a one-year OPT period. In order to apply for H-1B visa status, students must at least have a bachelor's degree or the equivalent in a field related to the position. More commonly, International students find an independent company to file an H-1B petition for him. That company 'sponsors' the student. Once approved, the student will be granted an H-1B visa for three years, with the possibility of extension. International students are not allowed to file for an H-1B visa without the support of another company, unless they are able to meet certain criteria.

Ultimately, foreign students may not operate a business they have opened merely under an F1 visa status. Please refer to the Department of Homeland Security and the U.S. Citizenship and Immigration Services for steps and further information to obtain additional visa status, of contact us at BUSINESS@THEJACOBSLAW.COM.

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