



School Law FYI

One Remedy to the National Teacher Shortage: Hiring Professionals from Abroad

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As the new academic year approaches, school districts and institutions of higher education in Wisconsin and throughout the US are experiencing employee shortages at alarming levels. As of late June 2023, there are nearly 300 vacancies for teachers, administrators and support staff in the Madison Metropolitan School District alone. While there are multiple factors contributing to the US teacher shortage, one possible solution to consider is expanding recruiting efforts and hiring professionals from other countries.

Below are a few concrete ideas for recruiting school staff from overseas, and a list of the four most common *temporary* work visas available to foreign workers filling jobs at schools, colleges, and universities. With quick action, school districts may be able to place highly qualified, motivated, and passionate foreign teachers in classrooms before September.

J-1: for Exchange Teachers (and Professors)

The US State Department created the J-1 exchange program to promote cultural exchange and the sharing of knowledge and skills. It oversees the exchange program by requiring employees and employers to apply through a “J-1 Sponsor” certified by the State Department. J-1 exchanges are available for various professions, including

J-1 - KEY TAKEAWAYS

- **Duration:** 3 years initial, 2 year extension.
- **Pros:** Inexpensive application. Employer pays no FICA. Potentially fast. Recruiting help available.
- **Cons:** Limited professions.

teachers (primary and secondary) and professors (higher education), and the requirements for each program are different.

Some J-1 Sponsors and their affiliates provide “placement” services to connect pre-qualified and available foreign teachers with US schools, often for an additional fee.

*Here are three options for placement services: **One. Two. Three.** They have not been reviewed and are not endorsed by Boardman Clark, so you may want additional guidance before using them.*

General Requirements: J-1 Teacher Exchange (primary and secondary education):

- **Foreign teachers must:**
 - Be current teachers meeting all qualifications in their home country.
 - If not working as a teacher, otherwise meet the teacher eligibility qualifications and have recently (within 12 months of applying) completed an advanced degree **and** have two years of full-time teaching experience within the past eight years.
 - Have earned the equivalent of a US bachelor’s degree and have two or more years of experience teaching.
 - Satisfy the licensing standards of the US state in which they intend to teach.
 - Be proficient in the English language.
- **School districts must:**
 - Enter into a hosting agreement with the J-1 Sponsor (which may require approval by the district school board).
 - Provide a supervising teacher to guide and monitor the exchange teacher.
 - Ensure that exchange teachers are engaged in cultural activities in the school and community.

TN: for Professors and Professionals from Canada or Mexico

TN - KEY TAKEAWAYS

- **Duration:** 3 years initial, unlimited extension.
- **Pros:** Fast! Inexpensive application. Long-term.
- **Cons:** Limited to Canadian/Mexican citizens; Limited professions.

The TN visa was created through the NAFTA trade agreement as a means to simplify the hiring of North American foreign workers. Qualified professionals from Canada or Mexico can be granted TN status and begin work in certain US jobs *very quickly* (possibly within 1 – 2 weeks), with relatively low administrative burden and cost to the employer.

General TN Requirements:

- The applicant must be a citizen of Canada or Mexico.
- The US job must be listed on the TN [NAFTA professions list](#):
 - The list **does not** include elementary or secondary school teachers.
 - The list does include college & university teachers, librarians, social workers, psychologists, vocational counselors, dieticians, occupational/recreational/physical therapists, registered nurses, computer systems analysts, accountants and other professionals.
- The applicant must have earned the minimum education listed beside the profession on the [NAFTA professions list](#), typically at least a bachelor's degree and professional license if required for the profession.

H-1B (or H-1B1 and E-3): for Teachers and other Professionals in Specialty Occupations

The H-1B visa is the most common US work visa because of its versatility, but it is one of the higher-burden and higher-cost visa options for schools. H-1B status is available to qualified professionals from all countries who work in “specialty occupations,” such as teachers, nurses, therapists, accountants, etc. H-1B1 and E-3

H-1B - KEY TAKEAWAYS

- **Duration:** 3 years initial, 3 year extension (more in limited cases).
- **Pros:** Available for many professional jobs. Potentially fast (with \$2500 premium processing fee).
- **Cons:** More costly and burdensome application. A numerical cap may apply depending on the level of institution. Slower process (without premium processing).

- *If required*, the employee must have been selected in the annual H-1B lottery and may be subject to the annual cap.

What About the H-1B Lottery?

The annual lottery for typical H-1B visas has had *low odds* of selection in recent years. However, certain applicants are exempt from the lottery requirement:

- Citizens of Chile, Singapore or Australia are eligible for H-1B1 or E-3 specialty occupation visas, which don't require a lottery.
- Nonprofit institutions of higher education are exempt, and many public school districts that are affiliated with institutions of higher education (via an MOU or other written agreement) may also qualify as exempt.

F-1 CPT/OPT: for Student Teachers, Teachers, Administrators, and Many More

Recruit for vacant positions at your local college or university's International Student Services (ISS) office. Most international students and recent graduates in F-1 Student status are eligible to work in jobs within their course of study, and they are eager to work in the US.

visas are "specialty occupation" visas similar to the H-1B, but they are available only to citizens of Chile, Singapore and Australia.

General H-1B Requirements:

- The position offered must be in a "specialty occupation" that normally requires a bachelor's degree or its equivalent.
- The candidate must have earned at least a bachelor's degree or its foreign equivalent, or must have work experience equal to a bachelor's degree (typically 5 years).
- The employer must prepare and pay all expenses and fees for the H-1B application and must pay the local prevailing wage for the employment.

F1: KEY TAKEAWAYS

- **Duration:** Varies, 1-4+ years.
- **Pros:** Recruiting help available. Available for wide variety of jobs, including entry level. Inexpensive to employer. Employer pays no FICA.
- **Cons:** Potentially slow application and approval.

- Curricular Practical Training (“**CPT**”) allows currently enrolled students to work in trainings or internships that are an *integral part of their curricular program*. Students can work on CPT full-time or part-time for as long as they are enrolled, but working more than 12 months in *full-time* CPT eliminates the student’s eligibility for OPT.
- Optional Practical Training (“**OPT**”) is available in addition to CPT and allows up to 12 months of full-time employment per education level, during enrollment or after graduation. The work must be within the

student’s major area of study.

- For graduates with STEM degrees, OPT can be extended an additional 24 months (“**STEM OPT**”), for a total of 36 months of OPT work authorization in the STEM degree field.

Students and graduates apply for CPT and OPT with the help of the Designated School Officer (DSO) in the school’s ISS, so work authorization can be granted with relatively little administrative burden or cost to the employer. The timing, however, depends on DSO deadlines and approval by the US Citizenship and Immigration Service (USCIS), so may require several months of advance preparation.

All Categories Above

Timing can vary greatly by visa type, due to approval processing timelines and, if necessary, visa appointment wait times at US Consulates in different countries. The employee’s spouse and children are eligible to apply for “derivative” temporary visas and accompany the employee.

If employers want the employee to stay beyond the validity period of their temporary work authorization, they may (in most cases) apply to sponsor the employee for US permanent residence, commonly known as a green card. Sponsoring an employment-based green card, however, can be quite costly and can take a long time so requires advance planning.

By hiring foreign staff, school districts and higher education institutions are not only filling vacancies, but they are also creating a more diverse workplace, with highly

talented and passionate professionals who teach valuable lessons about global connectedness and foreign and US cultures. The [immigration attorneys](#) at Boardman Clark can help you choose the best work visa option and can guide you through the complicated application process. Contact us for more information.

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