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What Does the Government Shutdown Mean for Employers?

The federal government shutdown began at 12:01am on October 1, 2025, and how long the shutdown will last is anyone's guess. While certain essential government services will remain available, the shutdown will result in a dramatic decrease in the operations of most federal departments and agencies.

The precise impacts the shutdown will have on employers remain to be seen, but past shutdowns and recent agency guidance issued in preparation for the shutdown provide some insight on what we should expect.

New Employee Onboarding and Immigration Services

While initially still available on the morning of October 1, E-Verify was soon disabled. This was expected, as the E-Verify system was temporarily unavailable during prior shutdowns, as well. When unavailable, employers are prevented from enrolling in E-Verify or verifying authorization for new employees to work in the U.S.

Even if E-Verify is down, employers are still required during the shutdown to follow I-9 compliance procedures when onboarding new employees. U.S. Citizenship and Immigration Services (USCIS) recently confirmed that employers are permitted to continue using the remote I-9 document verification under the USCIS-approved alternative review process. USCIS published additional compliance guidance on its website on October 1.

While USCIS operations will continue, field office staffing is likely to be reduced, and many visa and citizenship applicants that require verification through other agencies are likely to see their applications put on hold. In particular, the U.S. Department of Labor (DOL) will stop processing prevailing wage determinations and

other certifications required for many forms of work visas and green cards.

The U.S. Immigration and Customs Enforcement (ICE) is expected to continue its enforcement efforts, including workplace raids, throughout the shutdown.

Agency Actions relating to Alleged Unlawful Employment Practices

Most federal agencies that enforce federal employment laws will halt their investigation and enforcement actions during the shutdown. This includes agencies under the DOL. Among others, the Bureau of Labor Statistics (BLS), Office of Federal Contract Compliance Programs (OFCCP), and the Office of Administrative Law Judges (OALJ) "will completely cease operations," according to the DOL's Shutdown Contingency Plan issued on September 26.

The DOL has indicated that its agencies will only pursue legal cases and investigations that are in jeopardy of being lost due to statutes of limitations or as ordered by the courts. This means that most investigations, enforcement actions, litigation, and training offered by the Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of the Solicitor (SOL) will be on hold. OSHA will, however, have a subset of employees available to investigate and address workplace situations involving imminent threat to human life and fatalities.

Similarly, the Equal Employment Opportunity Commission (EEOC) has confirmed that over 90% of its workforce is being furloughed, which means that no charges of discrimination will be investigated, mediations will be cancelled, and the EEOC will not respond to correspondence. The EEOC also intends to ask courts to suspend pending lawsuits.

National Labor Relations Board (NLRB)

Spencer Fane has received communication from an NLRB agent stating that all but five of the NLRB's employees are or will be furloughed during the shutdown. Pending NLRB cases will be stayed and hearings postponed.

Federal Employment Litigation

At least initially, we expect federal courts to remain open. Federal District Courts are taking a mixed approach to pending cases involving a federal agency or employee. Some courts have announced that all civil litigation is expected to proceed, whereas at least one court issued an order clarifying that any lawsuits involving the U.S., a federal agency, or a federal employee as a party will be automatically stayed.

The U.S. Department of Justice will continue to prosecute criminal cases.

Should the shutdown continue beyond a few weeks, it remains possible that federal court operations may become limited or cease, too.

Federal Contractors

With their continued work and payment from the federal government in jeopardy, employers that have significant federal contracts may begin furloughing or laying off workers whose services are not needed due to the shutdown. If such furloughs or layoffs are significant, such contractors may need to issue advance notice under the Worker Adjustment and Retraining Notification Act (WARN) and/or similar state laws.

Federal contractors will also need to be mindful of pay requirements under the Fair Labor Standards Act (FLSA), particularly for salaried employees whose work is paused in the middle of a workweek. While it is usually permissible to require an employee to use paid time off for partial week absences, it is ordinarily not permissible to reduce an employee's weekly salary when they only work part of a workweek.

These employers will also need to consider their obligations to continue employee benefits and/or issue COBRA notices triggered by reductions in hours and work opportunities.

Key Takeaways

Employers remain subject to federal employment laws even while the government is shutdown. However, investigations, enforcement actions, and potentially even

litigation arising from suspected violations of such laws will likely be postponed until normal federal government operations resume.

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