

How The Partial Federal Government Shutdown Impacts Employment Law Matters

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The budget impasse in Washington is affecting some employment law and related matters. Here is how:

- The **U.S. Equal Employment Opportunity Commission (EEOC)** is, for practical purposes, closed. It is not investigating or issuing notices on discrimination charges, and all scheduled mediations are cancelled. The EEOC's electronic portal is not available. But state agencies that investigate discrimination claims are not affected.
- The **U.S. Citizenship and Immigration Service (USCIS)**, which handles immigration petitions, is largely self-funded by visa application filing fees. It is open and carrying out most of its functions. But some, such as those requiring interaction with the U.S. Department of State, which is affected in part by the shutdown, are impacted.
- USCIS's **E-Verify** system, which many employers are required to use within three business days of a new hire to verify the individual's eligibility to work, is not available during the shutdown. This means employers cannot access their E-Verify accounts. E-Verify customer support and related services are also closed. While E-Verify is not available, employers may continue to hire workers and must still complete Form I-9 no later than the third business day after an employee starts work. USCIS will provide guidance on creating E-Verify cases for new employees once the shutdown ends.
- Funding for the **U.S. Department of Justice (DOJ)** lapsed at the start of the shutdown on December 22, 2018. The **Federal Bureau of Investigation**, which is part of the DOJ, has furloughed thousands of agents and other employees, affecting employers that need help investigating crimes, such as embezzlement.
- The **federal court system** expects to lose funding by or around January 31, 2019. If the funding impasse is not resolved by then, courts are likely to discontinue "non-essential operations," halting most civil litigation, including employment cases. For example, employers that need to initiate a lawsuit

seeking injunctive relief in a dispute over misappropriation of trade secrets and/or breach of a non-compete agreement, would be affected.

- **U.S. Department of Labor** agencies, including the **Wage and Hour Division**, **Occupational Safety and Health Administration**, and **Office of Federal Contract Compliance Programs (OFCCP)**, are funded through later this year. They are open and investigating pending cases and filing new ones. In fact, on January 22, 2019 the OFCCP filed an amended complaint in its lawsuit against Oracle America Inc., accusing the company of underpaying female and non-white employees by over \$400 million over four years.
- The **National Labor Relations Board**, whose responsibilities include investigating unfair labor practice charges and conducting representation elections, remains open.

Hopefully the shutdown will end in the near future as economic pressure builds on elected officials to resolve their differences. Once the closed agencies reopen, however, it will likely take them some time to get through a backlog of work. If you need assistance with specific cases, contact Nexsen Pruet's employment and labor law group.

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