

NEWS BRIEF

How the Government Shutdown is Affecting Employers

The current partial government shutdown—which has been in effect since Dec. 22, 2018—is the longest shutdown in U.S. history. Unlike past shutdowns, the government is not completely closed. However, due to the prolonged nature of the shutdown, employers are starting to feel its effects. This article provides an overview of how the shutdown is affecting private employers in the United States.

Federal Agencies That Are Unaffected by the Shutdown

Due to the signing of a bill in September 2018 that funded federal agencies through Oct. 1, 2019, a handful of them, including the Department of Labor (DOL) and the National Labor Relations Board (NLRB), remain open and fully staffed during the shutdown. This means that it's business as usual for wage and hour compliance, as well as labor relations and workplace safety matters.

OSHA

OSHA, which is a part of the DOL, will remain open and fully staffed during the government shutdown. As a result, employers need to follow all of their OSHA regulatory obligations, including the annual [Feb. 1 deadline](#) to post information on workplace injuries and illnesses.

FEMA and Flood Insurance

The Federal Emergency Management Agency (FEMA) will remain open during the shutdown to provide

disaster response services. However, many federal contractors that work with the agency have had their operations suspended until the shutdown ends.

Additionally, Congress passed a measure to reauthorize the National Flood Insurance Program (NFIP) just before the government shutdown began. And, while FEMA initially ruled against the reauthorization, the agency quickly reversed course and is now offering both new NFIP policies and renewals.

Federal Agencies That Are Affected by the Shutdown

A number of federal agencies, including the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), the State Department and the U.S. Department of Agriculture (USDA), are affected by the shutdown. Federal contractors are also affected. Employers, if they haven't already, will soon start to feel the effects of the shutdown in terms of workplace discrimination claims, DOJ litigation and workplace immigration verification.

EEOC and the Shutdown

The EEOC, which is the office that's responsible for eradicating discrimination in the workplace, has the authority to receive, initiate and investigate charges of discrimination filed against employers. The government shutdown has reduced the EEOC's



authority to receive, initiate and investigate charges of discrimination filed against employers. The government shutdown has reduced the EEOC's regular staff of over 2,000 employees to just over 100. The reduction in staff has led to a reduction in available EEOC services, creating adverse effects for employees across the country.

The agency is encouraging individuals who believe they've been subjected to workplace discrimination to file charges. However, while the office will continue to receive discrimination charges during the shutdown, it will not be able to begin or continue any investigations, due to limited staff and limited resources. When the shutdown ends and the full staff returns, they will begin to dig through the cases that came in during their absence.

Additionally, access to the EEOC's electronic portal has been blocked during the shutdown. This prevents employers from receiving information about any pending or closed charges they may have. In addition, any scheduled mediations, hearings and litigations that directly involve the EEOC have either been canceled or suspended during the shutdown. The only exception to this is if the court does not grant a requested continuance.

DOJ and the Shutdown

Since the DOJ was not covered under the minibus funding bill last year, they are impacted by the partial government shutdown. DOJ lawyers are directly affected, as they have been furloughed during the shutdown, and any litigation that involves the federal government has been affected. And, DOJ lawyers requested that their civil cases be stayed, with deadlines postponed for the duration of the shutdown.

The DOJ has been operating with a reserve source of money since the shutdown began. However, federal courts announced that their funds will run out on Jan. 18, at which point the Anti-Deficiency Act will take effect and only employees who perform essential work will be retained. Because each court

gets to determine which of their workers are essential, each court will look different.

Criminal and time-sensitive cases are expected to be prioritized over civil litigations and employment law cases during the shutdown. As such, employers with upcoming trials should still prepare for them, but should not be surprised if their case is postponed indefinitely during the shutdown.

Immigration, the State Department and the Shutdown

Unlike past shutdowns, immigration-related agencies will generally stay open, lessening the effects employers will feel this time around. However, the State Department is affected by the shutdown, which, in turn, means that the E-Verify system is not available for employers. Employers will not be able to do the following during the shutdown:

- Enroll in the E-Verify system
- Create, view or take action in an E-Verify case
- Add, edit or delete a user account or company information
- Reset passwords
- Run reports
- Resolve E-Verify Tentative Nonconfirmations (TNCs)

Despite the E-Verify system being down, employers are still subject to Form I-9: Employment Eligibility Verification obligations. In an effort to minimize the burden on employers and employees, the U.S. Citizenship and Immigration Services (USCIS) has implemented the following policies for cases affected by the unavailability of E-Verify:

- The three-day rule for creating E-Verify cases is suspended.

- The period during which employees may resolve TNCs will be extended, regardless of how many days E-Verify is unavailable.
- USCIS will provide additional guidance regarding the three-day rule and the period to resolve TNCs deadlines once the shutdown ends.
- Employers are prohibited from taking adverse action against an employee due to their interim E-Verify case status, including when the case is in extended status due to the unavailability of E-Verify.
- Federal contractors with the Federal Acquisition Regulation E-Verify clause should contact their contracting officer to inquire about their deadlines.

USDA and the Shutdown

The U.S Department of Agriculture (USDA) is responsible for regulating food producers, ensuring food safety and protecting natural resources. The agency was not covered by the 2018 minibuss funding bill, but some USDA activities that are related to law enforcement or are financed through other available funds will continue.

The USDA has provided a list of procedures in the event of a government shutdown on [the agency's website](#). The USDA will continue initiatives related to commodity inspections, nutrition assistance programs and law enforcement. However, many of the agency's offices and administrative services will close until the end of the government shutdown.

Federal Contractors

While federal contractors aren't government employees, most businesses that perform work for agencies affected by the shutdown have been forced to suspend their operations. And, while many federal employees will receive back pay for the duration of the shutdown, contractors that are paid based on their time working will not receive any compensation.

Employers' Impressions of the Shutdown

As the shutdown continues, many employers across the country are starting to feel its effects in more ways than one. While the shutdown is impacting workplace laws, it has also attributed to the largest one-month stock market decline since the Great Depression. As the uncertainty persists, employers will start to feel the shutdown's effects even more.