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Current Immigration Consequences of the Government Shutdown

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With the federal government shutdown now a reality, employers should be aware of the immigration consequences. The following outlines how the government shutdown is affecting the operations at agencies that process immigration-related applications:

Department of Labor

The DOL's iCERT and PERM systems are currently unavailable due to the suspension of federal government services.

iCert: The iCert processes labor condition applications (LCA), which are required for H-1B visa petitions and PERM prevailing wage requests. During the shutdown, the DOL's Office of Foreign Labor Certification (OFLC) web sites, including the iCERT Visa Portal System (which processes the LCAs), have ceased processing any requests for LCA processing or allowing authorized users to access their online accounts.

The unavailability of iCert can be detrimental to companies whose employees' H-1B visas are expiring and do not yet have a certified LCA. It can also result in the inability to hire new workers or extend the work authorization of current employees until their LCAs can be processed. Further, the suspension of iCert can affect the processing of E-3 and H-1B1 filings at USCIS Service Centers and U.S. consulates since these applications must be supported by a certified LCA.

Littler will advise its clients of any USCIS guidance on whether uncertified LCAs may be accepted during the shutdown.

PERM System: The PERM system is unavailable due to the shutdown. The inability to file Labor Certification Applications (PERM) or prevailing wage requests at the PERM website will likely affect employers that are facing imminent deadlines, including recruitment expiration dates, relative to their PERM applications. Further, employers who filed PERM applications on Monday (prior to the shutdown) and received DOL's standard sponsorship questionnaire emails will not be able to complete the questionnaires until operations resume after the shutdown.

Department of Homeland Security

E-Verify: [E-Verify will also be unavailable](#) during the federal government shutdown. This means that employers will be unable to run new hires or take any other action in E-Verify so long as the government shutdown continues. During the shutdown, the DHS is suspending the requirement that employers must verify all new hires within three days of hire. However, E-Verify's unavailability does not exempt employers from their obligation to complete Form I-9 for all new hires within three days of hire.

It is recommended that employers make note in the I-9 files of any employees impacted by the shutdown that the company was unable to timely run the individual through E-Verify on account of the government shutdown. In the event of a future audit, a notation of this kind in the individual's file will help explain the delay in timely running the individual's information through E-Verify.

Further, employees will be unable to resolve any tentative non-confirmations (TNCs) received from E-Verify during the government shutdown. DHS has confirmed that the time period during which employees may resolve TNCs will be extended. Any days the federal government is closed will not count toward the eight business days the employee has to visit DHS or the Social Security Administration to resolve the TNC.

DHS has also advised any companies with federal contractors to contact the company's contracting officer to inquire further about extending deadlines.

Finally, DHS has advised that employers may not take any adverse employment action against an employee because of an E-Verify interim case status due to the federal government shutdown. Employers must continue to employ any employees who have TNC's in E-Verify during the shutdown.

U.S. Consulates

Currently, visa services at U.S. consulates are operating normally, but we recommend submitting visa applications and making visa appointments as soon as possible in case this changes. Visa applicants should be prepared for the possibility of future delays in the event that the shutdown persists and the State Department suspends or limits visa services.

Social Security Administration

The Social Security Administration will not be accepting or processing applications for Social Security numbers or replacement cards during the shutdown.

SAVE

SAVE will be operating during the shutdown. SAVE is the federal database used by government agencies – including State Departments of Motor Vehicles – to verify the immigration status of foreign nationals applying for benefits.

Littler will be monitoring the implications of the federal government shutdown on an employer's ability to obtain immigration-related services from federal agencies. Our attorneys are available to discuss possible options/strategies for any pending matters that may be affected by the government shutdown.

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