



“Due to the lapse in federal funding, this website will not be actively managed. E-Verify and E-Verify services are unavailable.”

This is the message that greets every employer that visits the website of E-Verify, the internet-based system maintained by the U.S. Citizenship and Immigration Service (USCIS) that cross-references the information provided on employee Form I-9 against Department of Homeland Security (DHS) and Social Security Administration (SSA) records to confirm employees' eligibility to work in the United States. There is no shortage of irony that a system intended to ensure workers are in the country legally is offline during a government shutdown over immigration policy. Nevertheless, the questions remains: what are employers to do while E-Verify is offline?

I-9 Obligations Unaffected

Most importantly, employers should understand that, although E-Verify is offline, they are still subject to all statutes and regulations relating to completion of Form I-9. Thus, employers must ensure that: (1) each new employee completes Section 1 of their Form I-9 on or before the first day of work; and (2) the employer completes Section 2 of the Form I-9 no later than the third business day after each employee begins work.

No Penalty for Delay

To provide guidance concerning E-Verify obligations during the shutdown, DHS announced the following:

- Employers will not be penalized for delays in creating E-Verify cases. The three-day rule for the creating of new cases is suspended due to the shutdown. Following the conclusion of previous shutdowns, DHS has provided a specific window of time for creation of new cases placed on hold during the shutdown once E-Verify is functional, and employers should expect the same to occur here. Additionally, in the aftermath of prior shutdowns, “Government Shutdown” has been a dropdown option when a new case is submitted outside of the three-day window.
- E-Verify's unavailability will extend the time period for employees to resolve tentative non-confirmations (TNCs). Ordinarily, employees have eight government workdays to visit an SSA field office or contact the DHS to contest a TNC. Due to the shutdown, DHS and SSA are not able to resolve TNCs, and days during the shutdown will not count against an employee's eight days to contest a TNC.

Employer Best Practices

To ensure that the unavailability of E-Verify has a minimal effect on operations, employers should keep track of employees hired during or immediately before the shutdown and create a record indicating that the creation of an E-Verify case for each was delayed due to the shutdown. Additionally, when the shutdown concludes, employers should contact counsel to identify the extended deadlines for any outstanding employee tentative non-confirmations.

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