



“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.

DALLAS

1601 Elm Street, Suite 4600
Dallas, TX 75201
T: 214.954.4135 F: 214.953.1332

HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
T: 713.986.7000 F: 713.986.7100



ABOUT THE AUTHORS



[Michael Kelsheimer](#), Partner - Gray Reed - mkelsheimer@grayreed.com

Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executives across several industries, including healthcare, oil and gas, construction and real estate. With more than 160 laws that impact the employment relationship, clients count on Michael to find effective solutions for every workplace problem they may encounter, both in and out of the courtroom. He has achieved favorable results in litigation before state and federal courts and in arbitration involving many issues, including non-compete and non-solicitation agreements, trade secret theft, all types of discrimination claims, executive employment agreements and FLSA wage and hour claims. Michael earned his J.D. from Baylor University School of Law.



[Jake Lewis](#), Associate - Gray Reed - jlewis@grayreed.com

Jake Lewis focuses his practice on resolving a broad range of employment litigation matters, including defense of employers under Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Family Medical Leave Act, and state anti-discrimination laws. He has significant experience handling Department of Labor audits and related litigation involving misclassification of employees and payment of overtime and minimum wage. Jake also prosecutes and defends unfair competition disputes from preliminary injunctive relief through trial, typically involving non-compete agreements, non-disclosure agreements, and misappropriation of trade secrets. He earned his J.D., *cum laude*, from Washington and Lee University School of Law.

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1601 Elm Street, Suite 4600
Dallas, TX 75201
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HOUSTON

1300 Post Oak Blvd., Suite 2000
Houston, TX 77056
T: 713.986.7000 F: 713.986.7100