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What To Do While the Government Is Shutdown

As many employers are discovering, several federal government services are temporarily disabled during the current government shutdown. One such service used by tens of thousands – and required by many -- employers across the country is E-Verify. Many employers are continuing to hire new employees but are uncertain about how to use E-Verify or what to do while they are unable to use it. Here are some practical steps to consider.

First, this is not a reason to choose not to hire an applicant; nor is it a reason to scrutinize an applicant's documents more closely out of a fear that the individual may not clear E-Verify at some future date. Indeed, doing so may expose your company to liability for document abuse discrimination.

Second, follow your normal hiring process, including properly completing an I-9 form on time, i.e., no later than the end of the third day after hire. Hold onto these I-9 forms and do not yet put them into your filing system.

Third, when the government resumes full operation and E-Verify is up and running again, you will want to promptly enter the relevant information on these new hires. We do not expect that employers will face sanctions or E-Verify penalties for not being able to use the system within the three days after a new worker is hired. However, employers who are required to use E-Verify may face problems if they do not enter new hire information promptly once E-Verify is restored.

We understand that certain functions within the Department of Labor also are not operating, including the DOL's PERM system for filing labor certification applications and Labor Condition Attestation forms for H-1 cases. US Citizenship and Immigration Services remains operational because it is a fee-based agency that does not rely on substantial government funding.

The EEOC and NLRB also have suspended operations for the time being.

Should you have any questions concerning the government shutdown's effects on particular compliance obligations or regulatory deadlines facing your business, please feel free to contact [David Whitlock](#), or any other member of our [Labor & Employment Law Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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