

One Minute Memo®



Possible Government Shutdown: Immigration Consequences for Employers and their Foreign National Employees

By Michelle Gergerian and Jason Burritt

Seyfarth Synopsis: *If Congress cannot resolve FY2018 funding issues by December 8, 2017, resulting in a federal government shutdown, it will have a ripple effect on employers, both large and small, with an impact on several agencies involved in the processing of immigration petitions.*

U.S. Citizenship and Immigration Services (USCIS)

In the event of a shutdown, USCIS will be minimally impacted because it is largely a fee-funded service. This means USCIS will continue to process applications and petitions for immigration benefits, with some processing delays possible. However, petitions for which a Department of Labor (DOL) certification is required -- such as an H-1B or E-3 petition that requires a Labor Condition Application (LCA) -- may be adversely affected, as discussed.

E-Verify, USCIS' free, internet-based system that allows businesses to determine the eligibility of their employees to work in the United States, will be inaccessible during a shutdown. Employers must continue to complete I-9 forms in compliance with the law and create cases in E-Verify if E-Verify becomes available.

Other agencies of the Department of Homeland Security (DHS), such as Customs and Border Protection (CBP) and Immigration Customs Enforcement (ICE) would likely retain most of their essential staff, so it is expected that TN and L-1 petitions for Canadian nationals would continue to be adjudicated at the border.

Department of Labor (DOL)

Office of Foreign Labor Certification (OFLC) employees, who fall under the umbrella of DOL, are considered non-essential and would likely be placed in furlough status during a government shutdown. OFLC would neither accept nor process any applications or related materials, including LCAs, applications for a prevailing wage determination, applications for temporary employment certification, applications for permanent employment certification (PERM applications), or PERM audit responses.

Department of State (DOS)

In the event of a shutdown, it is likely that visa issuance will continue, at least temporarily. It is expected that domestic and overseas Consular operations will remain fully operational as long as sufficient fees exist to support operations.

Seyfarth Shaw's Business Immigration Group is closely monitoring this developing situation. If you should have any questions about how the government shutdown might affect your workforce, please reach out to your contact person at Seyfarth Shaw LLP. We will be happy to address your questions.

If you would like further information, please contact [Michelle Gergerian](mailto:mgergerian@seyfarth.com) at mgergerian@seyfarth.com or [Jason Burritt](mailto:jburritt@seyfarth.com) at jburritt@seyfarth.com.

www.seyfarth.com



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