

The Government is Back For Now... Employers Should Address E-Verify Compliance Over the Shutdown Period

Labor & Employment Law Update

By Sara Zorich on January 29, 2019

The US Government was shut down for over a month, and the government's E-Verify system was down from December 22, 2018, to January 27, 2019. During the shutdown, employers who are E-Verify users were unable to enter any of their newly hired employees into the E-Verify system. But E-Verify users shouldn't fret. USCIS is giving you a grace period to catch up. The Department of Homeland Security and USCIS have updated the E-Verify website to address the shutdown.

The website states: "Now that E-Verify operations have resumed, employers who participate in E-Verify must create an E-Verify case by **February 11, 2019** for each employee hired while E-Verify was not available. You must use the hire date from the employee's Form I-9 when creating the E-Verify case. If the case creation date is more than three days following the date the employee began working for pay, select "**Other**" from the drop-down list and enter "**E-Verify Not Available**" as the specific reason."

If you have an employee who received a Tentative Non-Confirmation (TNC) during the shutdown (or just before) and informs the employer no later than February 11, 2019 that they want to contest, USCIS has indicated that employers should add 10 federal business days to the date on the employee's "Referral Date Confirmation" notice, and give the employee the revised notice. Federal business days are Monday through Friday and do not include federal holidays. As written, this statement could be interpreted to mean, for instance, that an employee who received a TNC on December 21, 2018, would originally have had until January 4th (8 federal business days) to visit SSA or DHS. Adding ten more federal business days would only give a new deadline of January 18th (which is still in the past—and during the shutdown).

With this in mind, we suggest employers watch the USCIS website for further updates because we expect USCIS to correct this instruction. In the interim, if an employee has chosen to contest the TNC and the employee's deadline to visit SSA or DHS has passed due to the government shutdown, make sure you inform the employee that they should visit SSA or DHS as soon as possible. Do not terminate the employee until you receive a final non-confirmation from E-Verify.

All of the normal E-Verify deadlines apply to employees hired on or after January 28, 2019.

The
Government
is Back For
Now...
Employers
Should
Address E-
Verify
Compliance
Over the
Shutdown
Period