

Electronic Alert

Volume 22, Issue 1

January 8, 2019

E-Verify Program Suspension: What Does It Mean For Employers?

By Wilson Jarrell

As you are undoubtedly aware, we are currently in the midst of a partial federal government shut down, effecting approximately a quarter of government functions. Amongst these is the Department of Homeland Security (DHS) E-Verify Program, which ran out of funding and congressional authorization on December 22, 2018.

E-Verify is a program that allows employers to compare information from an employee's Form I-9 to DHS and Social Security Administration records to confirm employment eligibility. Employers who enroll in the program via a website are required to run checks on new workers within three days of hire.

DHS announced recently that during the shutdown the E-Verify website will not be managed or updated, stating "information on this website may not be up to date. Transactions submitted via this website might not be processed and we will not be able to respond to inquiries until after the appropriations are enacted."

This means that, until the shutdown ends, employers will be unable to enroll in the program, access or edit accounts, start or take action on a query, or resolve tentative non-confirmations (TNCs) with affected workers.

What does this mean for employers? DHS has announced that employers will not be penalized for the shutdown and that the three-day rule for creating E-Verify cases will be suspended for any case affected by the program's unavailability. Further, the number of days E-Verify is unavailable will not count toward the days allotted to resolve a TNC. DHS stated that after the shutdown is ended and functions resume, the agency will put out further guidance on resolving cases affected by the shutdown.

Employers should note that the requirement to verify employment eligibility remains in effect during the government shutdown. Therefore, you are still required to complete Section 1 of an employee's Form I-9 by the end of the first day of employment, and Section 2 no later than the third business day after the employee starts work.

Best practice would be to monitor the shutdown, comply with all other Form I-9 requirements, and keep track of any new employees hired during the shutdown for whom you are unable to run an E-Verify query. Additionally, employers must not take any adverse action against employees who are in an interim case status due to the shutdown. Once the shutdown has ended, employers should log on to their E-Verify accounts and follow any instructions for creating and submitting queries to work through their backlog.

For questions on E-Verify and the effect of the partial federal government shutdown, contact Wilson Jarrell at wjarrell@barran.com or (503) 276-2181.