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E-Verify Is Back Open for Business

E-Verify is once again available for use by employers following the end of the federal government shutdown. As reported in our last alert, during the shutdown, E-Verify users were unable to access their accounts, verify the employment authorization of new hires, or reconcile any pending tentative non-confirmations in E-Verify. Now that E-Verify is again available, the Department of Homeland Security (DHS) has released guidance and instructions to employers who were impacted by E-Verify's temporary unavailability.

Extension of the Three-Day Rule: Employers normally have three (3) days from the date of hire to create a new E-Verify case for new hires. However, DHS has announced that employers will have until November 5, 2013 to create new E-Verify cases for any employees hired during the shutdown. In the event the E-Verify system requires a reason for the delay of the case, DHS has instructed employers to choose the "other" option from the drop-down list and enter "federal government shutdown" in the text field.

Handling Tentative Non-Confirmations (TNCs): DHS also has clarified that employers should add twelve (12) federal business days to the date printed on any TNC referral letter generated for employees who received a TNC between September 17, 2013 and September 30, 2013, and who were not able to resolve the TNC with either DHS or the Social Security Administration (SSA) due to the shutdown. Employees with TNCs generated during this timeframe will have until the new extended deadline to resolve their cases with either DHS or SSA. For any employees who decided to contest a TNC during the shutdown period, employers are instructed to initiate the TNC referral process in E-Verify now.

Handling Final Non-Confirmations (FNCs) or DHS No-Shows: For employees who received an FNC or no-show because of the government shutdown, employers are advised to close their E-Verify case and select one of the following two options in the E-Verify system: (1) "The employee continues to work for the employer after receiving a Final Non-Confirmation result," or (2) "The employee continues to work for the employer after receiving a No-Show result." The employer then should enter a new case in E-Verify for that employee in order to re-engage the TNC process, which will allow the employee an opportunity to go back and timely contest the original TNC result that led to a final non-confirmation.

Federal Contractors: DHS also has advised federal contractors to follow the instructions above to resolve any outstanding E-Verify issues, and to communicate with their contracting officers regarding these instructions and any steps being taken to resolve E-Verify deadlines which were missed because of the government shutdown.

For more information concerning compliance with these post-shutdown E-Verify instructions, please contact any 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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