



GMS Flash Alert

Immigration Edition

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United States - Employment Eligibility Verification Temporarily Suspended

The United States federal government entered a partial shutdown at midnight on Friday, December 21, 2018, that continues to remain in effect. At that time, nine federal departments and several agencies, including the Department of Homeland Security (DHS), were directed by the Office of Management and Budget to cease non-essential operations.

As a result of this partial shutdown, E-Verify, a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States, has been temporarily suspended. DHS, the government agency overseeing the program, announced that the website <http://www.e-verify.gov/> will not be actively managed and will not be updated until after funding is restored.¹

WHY THIS MATTERS

The E-Verify system allows employers to verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on Form I-9, *Employment Eligibility Verification*, against records available to the Social Security Administration (SSA) and DHS. E-Verify-registered employers are normally required to verify the identity and employment eligibility for each new employee no later than the third business day after the employee starts work for pay. However, E-Verify's current unavailability will significantly impact employees and employer operations. During the government shutdown:

- Employers will not be able to enroll in the E-Verify program; access their E-Verify accounts; create a case; view or take action on any case; add, delete, or edit accounts; reset passwords; edit company information; terminate accounts; or run reports.
- Workers will not be able to resolve E-Verify Tentative Non-Confirmations (TNCs). In addition, myE-Verify will be unavailable, and employees will not be able to access their myE-Verify accounts.

New Policies

While E-Verify is unavailable, U.S. Citizenship and Immigration Services (USCIS) has taken steps to minimize the burden on both employers seeking to hire new employees and prospective hires. These steps are as follows:

The “three-day rule” for creating E-Verify cases is suspended for employers affected by the unavailability of E-Verify.

The time period during which employees may resolve TNCs will be extended. The number of days E-Verify is not available will not count toward the days that the employee has to begin the process of resolving TNC.

Note: Additional guidance will be provided regarding the “three-day rule” and the TNC resolution deadline once E-verify operations resume.

Employers may not take adverse action against an employee because the E-Verify case is in an interim case status due to the unavailability of E-Verify.

Form I-9 Requirements

The government shutdown does not affect Form I-9 requirements. Employers must still complete Form I-9 no later than the third business day after an employee starts work for pay, and comply with all other Form I-9 requirements.

Next Steps

KPMG Law LLP in Canada is tracking this matter closely and will endeavor to keep readers posted of any further developments.

FOOTNOTES:

1 See: <https://www.e-verify.gov/e-verify-and-e-verify-services-are-unavailable> .

Contact us

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