

# What Does the Government Shutdown Mean for Employers? Answers to Your Top Questions

A Practical Guidance® Article by Sheila M. Abron, Steven M. Bernstein, Kathleen McLeod Caminiti, Jocelyn Campanaro, Benjamin M. Ebbink, Rick Grimaldi, David S. Jones, Braden Lawes, Todd B. Logsdon, Todd A. Lyon, Joshua D. Nadreau, Shanon R. Stevenson, J. Hagood Tighe, and Kristin R.B. White, Fisher & Phillips LLP



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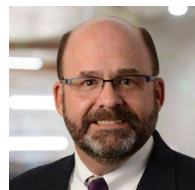
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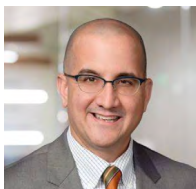
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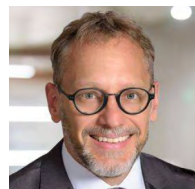
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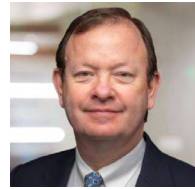
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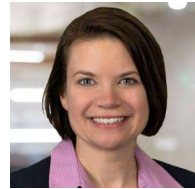
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Now that the federal government is officially in shutdown mode, employers will need to assess the impact it will have on their operations. Notably, various government services that you rely on will be disrupted, including regulatory approvals, contract awards, and workforce support programs. You can also expect delays in working with essentially any federal agency on any matter for the time being, so you should plan accordingly. Here's what employers need to know about the shutdown and the answers to your top questions.

## Why is the Government Shutting Down?

Under federal law, the government cannot spend money without Congressional approval. When Congress fails to enact the annual appropriation bills that fund federal agencies all non-essential functions of the agencies must halt until new funding is provided.

The federal fiscal year ended at midnight on September 30. Lawmakers in Congress are at an impasse on how to keep the government temporarily funded through a continuing resolution (CR), which is also known as a stopgap bill. The disagreement among lawmakers mostly centers around Affordable Care Act subsidies. When Congress failed to come to agreement by the deadline, government funding for most operations ceased and the government had to partially shut down.

## How Long Will the Shutdown Last?

It's hard to say. There have been numerous government shutdowns in the past, and the average event lasts less than a week. But three of the past four shutdowns have lasted considerably longer. The 1995-96 shutdown endured for 21 days, the October 2013 event lasted 16 days, and

the 2018-2019 shutdown was the longest in history at 35 days.

## How Will This Impact Employers?

In a typical shutdown, workers whose services are deemed "essential" to federal operations (such as air traffic controllers, FBI agents, TSA personnel, border patrol agents, and the military) will be on the job, as will federal workers whose missions are funded from non-appropriated sources, like fees (including the Patent and Trademark Office and certain USDA inspection programs).

However, a large number of federal workers would stay at home until a budget is agreed upon. Thus, employers should be prepared for the economic impact a lapse in government funding could have on businesses large and small, from delays in obtaining business loans to staffing shortages. Here are the key areas that will affect the workplace:

### Employment Discrimination Law

The Equal Employment Opportunity Commission (EEOC) is the primary agency charged with the enforcement of federal discrimination laws. Employees often turn to the EEOC as their first option when they believe they have suffered a workplace wrong. During past shutdowns, individuals were counseled to continue to file charges during the agency's closure in order to ensure that statutes of limitation were not exceeded. The EEOC received thousands of charges of discrimination during the past shutdowns, but no investigations could start. That led to backlogs that took months to work through.

Employers who had questions about pending or closed charges were unable to receive information during this blackout period. All mediations and hearings were canceled, and any litigation directly involving the EEOC as a party

was suspended unless the relevant court did not grant a requested continuance. Expect the same this time around.

## Labor Relations

The National Labor Relations Board (NLRB), the agency that governs private sector union-employer relations and union organizing drives, has been [operating without a quorum](#) for most of the year, which has stymied reversal of several controversial Biden-era decisions.

Despite the lack of quorum, day-to-day case-handling and union elections have largely continued unabated at the regional level. In contrast, the NLRB was decimated by the 2018 shutdown, and we expect the same this time around. Its 2018 contingency plan called for all but nine of its 1,435 employees to be sent home for the duration of the impasse. It stopped handling all cases, which impacted union elections, unfair labor practice investigations, and case decisions.

What does this mean for pending matters? During the most recent shutdowns, the Board handled due dates for filings by placing the cases in a state of temporary suspended animation. Any party that needed to file a document with the Board during this blackout period was automatically granted an extension of time equal to the number of days the shutdown lasted, and any due dates created prior to the shutdown were “tolled” by the same number of days even if the due date fell outside the dates of the closure. We would expect a similar measure to be put into place this time around.

As expected, a backlog of union petitions piled up during the past shutdowns, as the NLRB could not timely process them. Employers who file or receive representation petitions during this shutdown could once again be given a head-start to develop a response to the situation without an immediate pressing deadline looming, although we anticipate the Board will work hard to ramp back up to speed once the shutdown ends. Don't postpone action on the petition even if no election date is yet on the calendar.

As with other agencies, we would expect any NLRB hearings scheduled during the shutdown period to be postponed for some time. Just as air traffic gets backed up during a storm, there will be a considerable backlog to work through, and it would not be surprising for some hearings to be delayed by a matter of weeks once the government gets back on its feet.

## Wage and Hour Compliance

The Department of Labor's Wage and Hour Division (WHD) conducts investigations and compliance actions in the areas of minimum wage, overtime, child labor safeguards, and other workplace laws.

During recent government shutdowns, ongoing investigations essentially were stopped in their tracks. We expect this shutdown to look very similar in nature, so prepare for wage and hour investigations and compliance actions to be put on ice for the duration of the shutdown.

However, don't count on automatic extensions, as the personnel working on any ongoing matter may be deemed “essential” and may decide to carry on with your matter. Even if you receive an extension, don't count on it being the same length as the shutdown. You should use your time wisely during any break in the action.

Finally, don't count on a reprieve from battle if you are in the midst of a WHD investigation or litigation with the Solicitor's Office. But delays in ongoing litigation—both with the government and in private litigation—are expected if the shutdown lasts more than two or three weeks, since judiciary funding will be impacted. While the court system has reserve funds to operate for a few weeks, civil litigation could be significantly delayed thereafter.

## Immigration

Employers will feel the sting of any government shutdown when it comes to immigration-related matters in a number of different ways:

- The Department of Homeland Security (DHS) and its sub-agencies generally stay open during government shutdowns. This includes US Citizenship and Immigration Services (USCIS), which adjudicates the vast majority of immigration processes. Because USCIS is a fee-based agency which requires petitions and applications be accompanied by filing fee checks, most services are not expected to be impacted.
- Although USCIS may function, it will not be operating at full capacity because several of its services depend on other agencies. Most critically for employers, the US Department of Labor (USDOL) will stop processing Labor Condition Applications, which are essential prerequisites for filing I-129 H-1B cap, H-1B extension, H-1B transfer, and E-3 applications. USCIS has accepted late I-129 petitions in the past once the government reopened, as long as the petition was submitted with evidence that the primary reason for failing to timely file an extension or change of status request was due to the government shutdown.
- The USDOL will also stop processing Prevailing Wage Determinations, which are needed to proceed with PERM Labor Certification Applications, H-2Bs, and Schedule A immigrant petitions.
- Moreover, the USDOL will stop processing PERM/ Labor Certification Applications, which are the first step in the majority of the permanent residence/green card

processes and are the most common basis for immigrant visa processing and seasonal worker applications. In addition, the State Department also could be affected by the government shutdown. Consulates and embassies are responsible for the issuance of visas which allow foreign nationals to travel into the United States. Although this is a fee-based system, previous shutdowns saw delays and temporary stoppages of visa services because the State Department depends on other agencies for services, such as calendaring appointments and background checks. Consular posts will generally only handle services for US citizens, diplomats, and life or death emergencies.

- Notably, E-Verify became temporarily unavailable during previous shutdowns. This means employers were unable to verify employee identities, enroll in the program, or take any action on cases in progress. If E-Verify is unavailable this time, USCIS will likely provide guidance to employers to reduce your liabilities. USCIS previously confirmed that employers may continue to use the new alternate review process for remote I-9 document verification if E-Verify is temporarily unavailable due to a government shutdown. It is expected that this will continue to be the case.
- Additionally, ICE worksite enforcement actions, including raids and I-9 Notices of Inspection, are expected to continue.

## Workplace Safety

We expect the Occupational Safety and Health Administration (OSHA) to be heavily impacted by the shutdown. In years past, the agency was forced to suspend thousands of federal workplace inspections during shutdowns, many of which were never fully made up. The agency's limited appropriations prevented it from doing any inspection work except for workplace fatalities, catastrophes, and imminent danger situations involving a high risk of serious harm.

We have seen approximately 90% of OSHA's employees furloughed in past shutdowns, with area directors or assistant area directors shouldering much of the remaining burden. We expect to see OSHA only opening up between 15-20% of the number of inspections that would normally occur during any shutdown if history is any guide.

Meanwhile, OSHA requirements, including contest and abatement periods, will continue during any shutdown, although OSHA personnel would not be present. State OSHA plans should continue to perform limited work, but because they receive substantial funding from Federal OSHA, they will be forced to curtail their operations.

For example, OSHA runs a Consultation Program through State OSHA plans, which provides employers with free on-site safety and health assistance. Over 1,000 businesses requested consultation services during the previous two shutdowns, all of whom were turned away.

## Federal Contractors

Businesses that contract with the federal government will be especially impacted by a shutdown. Tens of thousands of stop-work orders for contracts were issued during the previous shutdowns, which impacted the federal contractor community to a great extent. For example, in a prior shutdown, payments to federal contractors were delayed, which led to widespread reports of contractors being forced to temporarily lay off employees, and also led to similar impacts on subcontractors who support the federal contract work.

The impact of this shutdown could be even more widespread. The federal government has ramped up its contractor program by funneling more work through outsourcing in the past few years, leading to more and more private companies relying on the federal government for their business. Federal contractors should consider the following:

- How much of your work is considered "essential"? If your business supports essential operations, you may still be in business during a shutdown.
- How much of your work is pursuant to a multi-year appropriation or no-year appropriation? Any such work may remain open during a shutdown.
- Did you receive a stop-work order? If not, you should consider it to be business as usual, and recognize that you will be held accountable to continue your contracted assignment despite what you might hear on the news.

We recommend you keep in close contact with your contracting official, who should be in the best position to update you about your work status during the shutdown. If you do receive a stop-work order, make sure to document all of your work and expenses accrued during the shutdown, as the government might reimburse you for certain items once normal service is resumed.

## Conclusion

Make sure to sign up for [Fisher Phillips Insights](#) to stay up to speed on the latest developments from our Government Relations Practice Group and other FP attorneys. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Government Relations Practice Group](#).

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- [Federal Government Employment \(Civil Service\) Resource Kit](#)
- [Federal Government Contracting Resource Kit](#)

## Trackers

- [Federal Government Contracting Key Legal Developments and Quick Links Tracker \(2025\)](#)

## Practice Notes

- [Common Pitfalls to Avoid in the Acquisition of a Federal Government Contractor](#)

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### Sheila M. Abron, Partner, Fisher & Phillips LLP

Sheila Abron is a partner at Fisher Phillips, LLP. Certified as a Specialist in Employment and Labor Law by the South Carolina Supreme Court, Sheila represents companies and educational institutions—large and small—as they navigate employment issues related to hiring, discipline, investigations, employment discrimination, unemployment, and other related issues. As Chair of the Firm's Affirmative Action and Federal Contractor Compliance Practice group, she has extensive experience providing compliance advice to federal contractors on affirmative action and OFCCP regulations and audits. Sheila also has a wealth of experience working on collective actions under the Fair Labor Standards Act (FLSA) and class actions under wage and hour state laws. She is a member of the National Association of College and University Attorneys (NACUA). Sheila also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the Family Medical Leave Act, diversity and inclusion, and many other areas.

Sheila is involved in various professional and community activities. She is a past president of the National Conference of Women's Bar Associations, the South Carolina Women Lawyers' Association (SCWLA) and the South Carolina Bar Young Lawyers (SCYLD) Division. She also serves on the Board of Directors for Columbia – Society for Human Resource Management (SHRM), and the Riverbanks Zoo Society. Sheila is active in the Richland County Bar, American Bar Association, and is a member of the Junior League of Columbia.

Steven M. Bernstein, Regional Managing Partner and Labor Relations Group Co-Chair, Fisher & Phillips LLP

Steve Bernstein is a distinguished labor relations attorney, representing employers in all facets of traditional labor and employment law. Steve co-chairs the firm's nationwide Labor Relations Practice Group and serves as Regional Managing Partner of the firm's Tampa office.

Over the past three decades, Steve has built an impressive practice dedicated to representing employers of all sizes in both the public and private sectors from the onset of union organizing and representation elections through the process of collective bargaining, grievance arbitrations, picketing activity, strikes and other work stoppages, and ensuing labor litigation before the National Labor Relations Board and the federal courts. Along the way, Steve has successfully handled hundreds of Unfair Labor Practice charges, securing favorable outcomes for clients across a multitude of industry sectors. He has also counseled a multitude of employers through the complex labor relations implications of mergers and acquisitions.

### Kathleen McLeod Caminiti, Partner and Co-Chair, Wage and Hour Practice Group, Fisher & Phillips LLP

Kathie Caminiti is a partner in the firm's New Jersey and New York offices, and a co-chair of both the Wage and Hour and Pay Equity and Transparency practice groups. She has extensive experience handling all aspects of employment litigation, including individual plaintiff discrimination claims, restrictive covenant litigation and wage and hour class and collective actions.

Kathie has successfully defended cases alleging civil rights violations, race, sex, age and disability discrimination, sexual harassment, whistle-blowing, wrongful discharge and retaliation. She has also defended employers and financial institutions in Employee Retirement Income Security Act (ERISA) cases, including class actions, seeking severance, pension and health and welfare benefits.

### Jocelyn Campanaro, Partner, Fisher & Phillips LLP

Jocelyn is co-chair of the firm's Immigration Practice Group. She is a nationally recognized business immigration attorney, guiding companies throughout the country on how to effectively navigate U.S. immigration law. She has extensive experience in all areas of business immigration, including helping clients stay informed of current changes in the law, handling nonimmigration and immigration visa applications, securing outbound visas and developing global mobility plans. She represents local, national and multi-national companies in such industries as financial services, information technology, construction, hospitality, manufacturing, professional sports and other fields.

In addition to her expertise regarding immigration benefits, Jocelyn also provides employer and management training and guidance on I-9 compliance issues, conducting internal audits and representing clients in government investigations.

### Benjamin M. Ebbink, Partner, Fisher & Phillips LLP

Benjamin M. Ebbink is a partner in the Sacramento and Washington D.C. offices, Co-Chair of the Government Relations Practice Group and Chair of the Staffing Industry Group.

With over two decades of experience in the intersection between labor and employment law and public policy, he focuses on legislation and regulations enacted at the federal, state and local levels. Benjamin assists employers with navigating evolving legislative and regulatory landscapes in a variety of areas.

Benjamin is a trusted advisor to the PEO and staffing industries, having worked on nuanced legal and regulatory issues affecting these industries for over two decades. In addition, he handles strategic initiatives aimed to provide top-shelf service to the unique needs of the firm's staffing clients. Benjamin is a frequent speaker on panels and conferences focused on issues that matter to both the PEO and staffing industries.

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### **Rick Grimaldi, Partner, Fisher & Phillips LLP**

As an experienced and accomplished labor lawyer, Rick Grimaldi also draws on a diverse background in government relations, and the media to help businesses become both more successful organizations and better employers.

As a member of the firm's Labor Relations Practice Group and co-chair of the firm's Government Relations and Crisis Communications and Strategy practice groups, he partners with clients to achieve labor and employment related goals by combining sound, practical, strategic advice with an understanding that business decisions are never made in a vacuum. He has been involved in a number of high-profile matters of significance to his clients.

Rick is also a sought-after speaker who travels the country helping companies and organizations understand the ever-changing work environment, various employment issues, and how to blend diverse employee populations for maximum effectiveness. He has long been on the front lines of advocating before state and local legislative bodies to develop beneficial laws and policies and on working with clients to navigate potentially damaging situations while maintaining positive reputations. This, combined with his years practicing labor law, makes him uniquely qualified to assist companies as they face an ever changing and challenging legal and policy landscape.

### **David S. Jones, Regional Managing Partner, Fisher & Phillips LLP**

David Jones is the managing partner of the firm's Memphis office and co-chair of the firm's Immigration Practice Group. He practices exclusively in the area of immigration and related employment and compliance matters.

He represents clients in complex matters relating to both immigration benefits and enforcement and in proceedings before the Department of Homeland Security, the Department of Labor, the Department of Justice and the Department of State, as well as in matters related to citizenship status discrimination and export control compliance under the Export Administration Regulations (EAR) and International Traffic In Arms Regulations (ITAR).

David has extensive experience in assisting companies with hires or transfers of employees from outside of the U.S. in industries such as agriculture, automotive, banking and finance, chemicals, construction, energy, entertainment, healthcare, education, hospitality, information technology, insurance, logistics, manufacturing, mining, recycling, research, restaurant, retail and sports.

### **Braden Lawes, Senior Government Affairs Analyst, Fisher & Phillips LLP**

Braden Lawes is a Senior Government Affairs Analyst in the firm's Washington, D.C. office and assists the Government Relations Practice Group in identifying and communicating federal and state policy changes that impact corporate counsel and their workplaces across the country.

Prior to joining Fisher Phillips, Braden was a Senior Government Affairs Associate for a government affairs firm in Washington D.C. where he managed a diverse portfolio of non-profit and trade association clients and tracked federal legislation in the transportation, cybersecurity, and healthcare sectors. In this role, he also guided companies through the often-complex federal appropriations process, organized congressional briefings to educate legislative staff on various policy matters, and drafted letters on clients' behalf to the Office of Management and Budget (OMB) and congressional committees.

### **Todd B. Logsdon, Partner, Fisher & Phillips LLP**

Todd Logsdon is a partner in the firm's Louisville office and co-chair of the firm's Workplace Safety and Catastrophe Practice Group. His practice is devoted to advising and representing employers regarding labor and employment law matters. Todd is a key contributor to Fisher Phillips' COVID-19 Task Force and has assisted employers with successfully navigating workplace employment and safety issues throughout the pandemic.

Todd is regarded as a leader and trusted advisor on Occupational Safety and Health Administration (OSHA) issues throughout the nation and across various industries, including manufacturing, healthcare, construction and utilities. He has extensive experience contesting and litigating OSHA citations, representing employers during OSHA inspections/investigations, conducting OSHA compliance audits, defending whistleblower/retaliation claims as well as providing OSHA compliance advice to clients. He also regularly handles employment disputes such as discrimination, Family and Medical Leave Act (FMLA), wage and hour and covenants not to compete on behalf of his clients. His practice includes the defense of employment-related claims before federal and state courts and administrative agencies, as well as counseling and training clients on day-to-day compliance issues and litigation avoidance. Todd accrued many years of practical experience prior to beginning his legal career working in manufacturing with responsibilities for Human Resources and Safety. He is licensed to practice in both Kentucky and Indiana, a board member of The Kentucky Chamber Center for Policy and Research, is a former board member of the Boys and Girls Club of Kentuckiana, has served as the Southern Indiana SHRM president and is an alum of Leadership Southern Indiana.

### **Todd A. Lyon, Partner and Labor Relations Group Co-Chair, Fisher & Phillips LLP**

Todd Lyon is a dynamic force in labor law, serving as the co-chair of the Labor Relations Practice Group at Fisher Phillips. With nearly three decades of experience, Todd is renowned for his innovative approach to solving complex labor issues across the country, with particular emphasis on businesses operating on the West Coast. His practice is dedicated to representing public and private sector employers in labor negotiations, strikes/lockouts, grievance and interest arbitrations, relocations and closures, work jurisdiction disputes, and employment and benefit litigation.

Todd's career began with representing labor organizations in Chicago and Seattle, providing him with a comprehensive understanding of both sides of the labor spectrum. This dual perspective allows him to craft and deploy strategies that align with his clients' goals while maintaining constructive labor relations. His expertise spans a diverse range of industries.

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Joshua Nadreau is the Regional Managing Partner of Fisher Phillips Boston office and Vice Chair of the firm's Labor Relations Group. He represents clients across the country in traditional labor matters, complex employment litigation, and high-stakes issues at the intersection of law, sports, and higher education, among others.

Josh is widely recognized for his work advising employers through all phases of union organizing campaigns, representation proceedings before the National Labor Relations Board (NLRB), and collective bargaining. He has successfully defended clients against unfair labor practice charges, led internal labor strategy for publicly traded companies and major universities, and negotiated successor agreements in some of the country's most union-dense industries. He also counsels buyers and sellers in transactions involving unionized workforces, helping clients assess and mitigate labor risks in corporate acquisitions.

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Shanon Randhawa Stevenson is a partner in Fisher Phillips' Atlanta office, Chair of the firm's Diversity, Equity & Inclusion Committee, Co-Chair of the Immigration Practice Group, and a member of the firm's COVID-19 Taskforce. Her practice focuses on immigration law in the information technology, financial services, healthcare, education, and manufacturing industries.

Shanon focuses on the underlying business issues that prompt organizations to obtain legal counsel, knowing that the compliance and regulatory aspects of maintaining a successful immigration program can distract employers from pursuing their core competencies and business objectives. Shanon partners with clients to alleviate that distraction and reduce their risk profiles so they can focus on the business of innovation and growth.

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Hagood Tighe is a partner in the firm's Columbia office and co-chair of the Wage and Hour practice group. He is also an active member of the firm's class and collective action practice. In recent years, Hagood has handled approximately 40 class and collective actions throughout the country. Much of his class and collective experience is in the wage and hour area. He also has extensive experience with Worker Adjustment and Retraining Notification Act (WARN) class action litigation.

While he maintains an active litigation practice, he also focuses on providing practical and proactive advice designed to minimize the risk of litigation. Part of this effort includes working with national and local clients implementing arbitration programs. Hagood also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the FMLA, and many other areas. Additionally, Hagood has authored numerous articles about employment law and regularly lectures at seminars regarding employment law.

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Kristin R.B. White is a partner in the firm's Denver office, co-chair of the firm's Workplace Safety and Catastrophe Management Practice Group and co-chair of the firm's Energy Industry Team. Kristin counsels and defends clients in regulatory workplace safety matters, and often acts as crisis management counsel for employers across all industries.

With more than two decades of experience, she advises employers with respect to their obligations concerning injured workers, including navigating paid sick leave, the Americans with Disabilities Act, Family Medical Leave Act, and other employer leave obligations. Kristin acts as a strong advocate for her clients before government agencies and administrative boards, such as the Federal Motor Carrier Safety Administration (FMCSA), Occupational Safety and Health Review Commission (OSHRC) and the Federal Mine Safety and Health Review Commission (FMSHRC). Her experience further includes counseling and defending employers against whistleblower claims, discrimination claims, wrongful termination, and general employment law claims.

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