



Back Online and On Alert: What Employers Must Do Now As the Government Shutdown Ends

Insights

11.13.25

With the federal government shutdown ending, employers need to shift gears fast. Key federal agencies will soon resume normal operations, and we'll see regulatory action and oversight surge back into motion. This is the moment to move from pause to power-up: review where your organization hit the brakes, identify what got delayed, and prepare for the ramp-up ahead. Here's what you should expect and what you should do.

Mechanics of the Restart

With federal funding resumed, many previously "non-essential" agency functions will begin to re-activate. But don't expect an immediate return to normalcy. Agencies will need to dig out from the backlog created by the longest shutdown in our nation's history, so you'll see a gradual ramp-up period for pending investigations, audits, applications, and compliance checks. Officials will likely prioritize high-risk or high-profile issues.

For employers, your quiet window is now closed. If your organization postponed compliance initiatives, filings, or responses during the shutdown, now's the time to dust off those items. Most importantly, you should review your exposures or any postponed enforcement activities, gearing up for agencies to resume their outreach, inspections, investigations, and litigation.



Employer's Game Plan as Shutdown Ends



EEOC Back in Action – and More Powerful Than Pre-Shutdown

Agency will return with a working quorum and full power to take action



Expect a Labor Board Backlog

It will be slow going at first – but NLRB may soon have a quorum



Prepare for Wage and Hour Changes

Look for many developments in the coming months



Workplace Safety Action Will Ramp Up

New leadership means quick action at OSHA



Key Immigration Processes Return

Employers can expect delays until things get back to normal



Renewed Activity for Federal Contractors

Full operations will resume quickly

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EEOC Back in Action – and More Powerful Than Pre-Shutdown

- The Equal Employment Opportunity Commission (EEOC) is the primary agency charged with the enforcement of federal discrimination laws. During the shutdown, EEOC services were limited – no investigative action occurred, litigation was paused (unless a court required a case to proceed), transactions submitted through the agency's website were not processed, mediations were canceled, and staff was unavailable to answer questions or requests submitted to the agency.
- With the shutdown ending, you should expect all EEOC activities to resume and for any appointments, hearings, mediations, or proceedings that were cancelled during the shutdown to be rescheduled.

- The EEOC is not only back in action but more powerful than it was when the shutdown began. The Senate approved Brittany Panuccio as the third Commissioner on October 7, restoring the agency's full power. For the first time since January, the EEOC will be able to issue federal regulations, release enforcement guidance, and tackle large-scale litigation.
- What can employers expect from the newly empowered agency? Panuccio has pledged to "vigorously enforce Title VII," and she has voiced skepticism about workplace initiatives that provide "preferential treatment" in the name of diversity. [Read more about the top actions we expect the EEOC to prioritize.](#)

Action Steps for Employers

1. If you were scheduled for EEOC-related hearings, mediations, or proceedings that were cancelled during the shutdown period, determine how and when those matters will be rescheduled.
2. If you had any matter that was subject to a discovery or filing deadline that fell within the shutdown period, work with counsel to determine the extended deadline date, if any.
3. Expect proposals to regulate private-sector DEI programs.
4. Stay tuned for the Trump administration to shift the legal landscape on the Pregnant Workers Fairness Act rule and gender identity protections.

Expect a Labor Board Backlog

- Most activities from the National Labor Relations Board (NLRB) – the agency that governs private sector union-employer relations and union organizing drives – were halted during the shutdown. In particular, the Board:
 - Tolled time for filing documents, including briefs and appeals;
 - Postponed unfair labor practice hearings before Administrative Law Judges; and
 - Postponed representation elections and hearings.
- The Board noted, however, that the six-month statute of limitations would remain in effect for filing unfair labor practice charges.
- The pause in operations will continue to have a huge impact on union elections, unfair labor practice investigations, and case decisions. The NLRB was decimated by the 35-day 2018 shutdown, and we expect similar consequences this time, especially given the record-breaking length of the 2025 shutdown.
- Notably, the NLRB has been [operating without a quorum](#) for most of the year, which has stymied reversal of several controversial Biden-era decisions. The Senate HELP Committee recently advanced a Trump Board nominee (as well as the President's pick for General Counsel), but it halted the vote on another nominee. With only one active Board Member, two more need to be confirmed before the NLRB can resume issuing decisions.

- We do expect the Board to work swiftly once it does gain a quorum. Priorities for a Republican-led NLRB include overturning certain Biden-era decisions. [Click here to learn about the five most significant decisions that will likely be on the chopping block.](#)
- Meanwhile, more states are considering measures to protect workers as federal labor regulation remains uncertain. [You can read about those measures, as well as the NLRB's response, here.](#)

Action Steps for Employers

1. Calculate new timelines for filing documents. In the past, 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.
2. Review any postponed matters and prepare to take action. There will be a considerable backlog of union petitions, hearings, and other matters to work through. It would not be surprising for some processes to be delayed by a matter of weeks as the government gets back on its feet.
3. Be prepared for a flurry of activity. The NLRB may have turned the lights back on, but the practical implications for pending RC and RM union election petitions remain unclear. With hearings to be scheduled at the same time across the country, we expect a drain on resources for the agency, parties, and advocates. Moreover, unions may have been waiting to file petitions the moment the regions reopened for business.
4. Watch for news on NLRB nominees. Changes may happen fast once the Board restores a quorum, and you'll want to be ready for new decisions that affect your policies and procedures.
5. Track developments at the state level. The NLRB is challenging New York [over its new labor law](#) that attempts to regulate areas the Board claims are “explicitly reserved for federal oversight.” Lawmakers in other states ([and even some localities](#)) are also attempting to fill perceived gaps in federal labor regulation.
6. Reach out to legal counsel. Your FP attorney can help you create an action plan as you review your labor strategy and the impact of the shutdown.

Prepare for Wage and Hour Changes

- The Department of Labor's (DOL's) Wage and Hour Division (WHD) is no longer waiting for [its new administrator, Andrew Rogers, to assume office](#). His nomination was confirmed by the Senate during the shutdown, and he was sworn in last week.
- WHD investigations into overtime, minimum wage, and family medical leave laws that were halted during the funding pause will resume. Its regulatory work is also expected to restart with some speed, given that the foundation for much of the DOL's planned policy changes was likely developed ahead of Rogers' arrival.

- The enforcement subagency was already in the process of proposing changes to minimum wage and overtime rules for certain in-home domestic service employees.
- But it's also planning to issue updates on independent contractor and joint employer status under the Fair Labor Standards Act (FLSA) before the end of the year, according to the DOL's Spring 2025 Regulatory Agenda. Any changes to the DOL's approach to joint employment or independent contractor status could have wide-ranging impacts on businesses that utilize contracting arrangements, franchising agreements, or other third-party services.
- Compliance assistance has been a major focus of Trump administration. For example, the DOL rebooted and expanded its Payroll Audit Independent Determination (PAID) Program as well as its opinion letter program with the goal of better assisting employers with their questions under multiple laws enforced by the agency. With the lights back on at WHD, expect more opinion letters and employer guidance to be released.

Action Steps for Employers

1. Contact counsel about the status of any pending WHD investigations that may have been extended or delayed during the shutdown.
2. Be aware of any contracting and third-party arrangements your business is engaged in. Expected changes from the agency in the joint employer or independent contractor space that could require revisions to these agreements.
3. Consider participating in the WHD's compliance initiatives – with guidance from legal counsel. Before signing on to the PAID program or other compliance programs, make sure you make note of state laws that could be more robust in terms of law, enforcement, damages, and statutes of limitation.
4. Consider conducting a privileged internal audit to determine whether your organization is compliant with federal and state wage and hour laws.

Workplace Safety Action Will Ramp Up

- Regular enforcement and compliance assistance activities at OSHA will resume at normal frequency now that funding for the agency is secured. For reference, during the shutdown, OSHA was only operating with a little more than a quarter of its 1,664 staff. Employers can expect a potential quick uptick in inspections for issues reported during the shutdown, like hospitalizations and amputations. Cases that have been contested and were in litigation will pick back up, although entities involved in these investigations may see some rescheduling.
- OSHA administrator David Keeling, who is now in place at the agency, is expected to scrutinize rules mandating companies to report certain injury data. The Biden administration required employers to electronically submit injury and illness data, and separately established guidelines for employers to record and report Musculoskeletal Disorders and injuries. The Trump

administration is likely to reverse or scale back these requirements to reduce regulatory burdens.

- A nationwide heat safety standard to protect outdoor and warehouse workers from extreme temperatures has also been in the works at OSHA. With Keeling in office, OSHA can move forward with reviewing comments submitted during the rulemaking process. The Trump administration is expected to change the proposal or toss it altogether.

Action Steps for Employers

1. Be aware of differing and stricter state workplace safety requirements in areas where your business operates. States that have their own OSHA plans could be galvanized to issue their own standards if they disagree with federal actions.
2. Review your recordkeeping practices for awareness of the data you're collecting and compliance costs associated with that documentation.
3. Employers operating in multiple states will need to track and adapt to a patchwork of state-specific compliance requirements.
4. While rule changes are on the horizon, OSHA standards can take some time to finalize, especially with the potential for litigation. Contact your Fisher Phillips attorney to stay up to date on where the law currently stands and if you need to make changes to your workplace safety policies.

Key Immigration Processes Return

- During the shutdown, US Citizenship and Immigration Services (USCIS) remained operational in a limited capacity, but some processes tied to other agencies were stalled, such as H-1B and PERM filings. As these other agencies get back to normal operations, immigration matters that had been impacted will be able to proceed.
- However, there may be backlogs due to a higher volume of filings as employers try to get current on H-1B and PERM-related filings. Most other matters should continue to process normally, but delays across the board could occur.
- The DOL resumed processing Labor Condition Applications (LCAs), prevailing-wage determinations, and PERM labor certifications on October 31. This allowed employers to continue preparing these filings that had been delayed for almost a month. Employers should review those filings to evaluate where they stand and prioritize any deferred work, especially those with expiration dates as they could have passed or are upcoming.
- For visa processing, consular operations, background checks, and related functions that were impacted should now show movement. But you can expect delays to persist as posts clear backlogs.

Action Steps for Employers

1. Inventory any immigration-related filings or processes paused during the shutdown, including H-1B transfers, E-3, PERM petitions, and change-of-status cases. Prioritize filing those cases that had expiration dates or will soon.
2. Evaluate timeline risks. For any extension or change of status that hit the shutdown period, document the agency disruption and anticipate possible grace or allowance requests. Historically, agencies accepted late filings tied to shutdown delays.
3. Monitor consular visa processing. If employees or new hires abroad were awaiting visa appointments, check with your counsel or staffing provider for updates on backlogs and schedule shifts.

Renewed Activity for Federal Contractors

- With the shutdown ending, contracting officers and agency procurement offices will resume full operations. Outstanding solicitations, contract awards, vendor onboarding, and invoice payments that stalled should now begin processing again.
- Contractors that were undergoing investigations with the Office of Federal Contract Compliance Programs (OFCCP) should be prepared for the agency to restart its investigations.
- For contractors who received stop-work orders or experienced payment delays, now is the time to document everything. The window for claims or negotiations to recoup costs incurred during the shutdown is now open.

Action Steps for Contractors and Subcontractors

1. If you were in the process of an investigation during the shutdown period, determine how and when the investigation will resume, including relevant timelines for submissions.
2. Re-engage your contracting officer to confirm your contract status, especially if you had a stop-work directive, delayed deliverables, or payment issues during the shutdown.
3. Document suspensions and incurred costs: Ensure you have detailed logs of work stopped, idle employees/equipment, and any expenses you incurred during the shutdown. These will support any claim or negotiation.
4. If you rely on subcontractors who were idled or paid late, check whether your contractors are resuming work and invoices are being processed. The ripple effect may continue into your supply chain.
5. With government oversight resuming, ensure that your contract compliance documentation (labor laws, safety, cybersecurity, etc.) is current and ready for audit. Consider initiating internal audits now so you're prepared when agency audits ramp back up.

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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