



UPDATE Immigration

October 2013

Impact of the U.S. Government Reopening and Other Immigration Updates

The Department of Labor (DOL) and E-Verify are open for business! On October 17, 2013, both E-Verify and relevant immigration-related DOL systems resumed operations after the 16-day federal government shutdown. As outlined in our prior alert, these systems were suspended during the shutdown.

With regard to E-Verify, the United States Citizenship and Immigration Services (USCIS) provided guidance regarding the manner in which a company should respond to cases affected by the shutdown. Specifically, the USCIS has indicated that:

- The deadline to resolve Tentative Nonconfirmations (TNCs) received between September 17, 2013, and September 30, 2013, that were not resolved because of the shutdown has been extended by 12 federal business days from the date printed on the "Referral Letter" or "Referral Date Confirmation."
- If an employee received a Final Nonconfirmation (FNC) or No Show because of the government shutdown, a company should (1) close the case and (2) select "The employee continues to work for the employer after receiving a Final Nonconfirmation result," or "The employee continues to work for the employer after receiving a No Show result." The employer must then enter a new case in E-Verify for the respective employee.
- A company must create an E-Verify case for each employee hired during, or otherwise affected by, the shutdown no later than November 5, 2013. If prompted to provide a reason why the case is late (i.e., the case did not conform with the three-day rule), the company should select "Other," and indicate "federal government shutdown" in the open field.

In addition, the DOL has also resumed its review of Labor Certifications, Labor Condition Applications, and Audit responses. It is important to note that the DOL's long wait times are likely to increase before they improve because of the existing DOL backlog. Finally, the USCIS has indicated that the government shutdown would be considered an extraordinary circumstance to excuse a late H-1B filing, if the government shutdown was the primary reason the petitioner failed to timely file an H-1B extension or change of status petition.

OTHER IMMIGRATION NEWS

In other immigration news, we are beginning to see the impact of the U.S. Supreme Court's

2013 decision that paved the way for same-sex immigration benefits. In June, the U.S. Supreme Court struck down key sections of the Defense of Marriage Act (DOMA) giving married gay couples the same federal benefits as married straight couples. The decision has an important impact on the nation's immigration policy. As Secretary of Homeland Security Janet Napolitano explained, "U.S. Citizenship and Immigration Services [will] review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse." Consequently, we are beginning to see USCIS approvals (including dependent petition approvals) for same-sex couples. In fact, the USCIS has granted derivative benefits through employer sponsorship, work permits for certain dependent spouses, and family-based green cards for same-sex couples.

Dependent visas for same-sex partners are also being processed at U.S. Consulates and Embassies outside of the United States. As Secretary of State John Kerry explained, "If you are the spouse of a U.S. citizen, your visa application will be treated equally. If you are the spouse of a non-citizen, your visa application will be treated equally. And if you are in a country that doesn't recognize your same-sex marriage, then your visa application will still be treated equally at every single one of our 222 visa processing centers around the world."

However, same-sex couples are only eligible for immigration benefits if they are "married." To determine a couple's marriage status, the USCIS and Customs and Border Protection (CBP) will examine where the marriage took place. Generally, a marriage is valid for immigration purposes if the marriage is legal in the location where it was celebrated. In addition to 14 states within the United States and certain regions of Mexico, 16 countries permit same-sex marriage, including: Argentina, Belgium, Brazil, Britain, Canada, Denmark, France, Iceland, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, and Uruguay. Even if the marriage occurred in an area where same-sex marriage is legal, please note that the same-sex marriage will still be subject to equal scrutiny regarding the bona fides of the marriage.

Finally, with the restoration of all federal government services, comprehensive immigration reform has become a top priority of the Obama administration. We will provide additional updates as information regarding this reform becomes available.

CONTACT US

If you have any questions about the content in this legal update, contact one of the members of our Immigration Practice Group below. [Robinson & Cole's Immigration Practice Group](#) has experienced attorneys who have assisted clients with a wide range of immigration issues.

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