Proskauer

Another Government Shutdown – What Every Federal Contractor Needs to Know

Government Contractor Compliance & Regulatory Update on **October 1, 2025**

As of October 1, 2025, we are in federal government shutdown. During previous government shutdowns, government agencies and departments issued stop-work orders, grinding work on government projects and contracts to a halt. Contractors were then faced with the difficult task of remaining in compliance with their obligations to their employees while work and funding for those contracts has ceased. Contractors now must consider how to handle the complex employment issues that come with a government shutdown. Although the discussion below is not intended to be comprehensive, it discusses many of the significant employment-related issues a shutdown presents for contractors.

Wage and Hour Considerations

During a shutdown, non-essential government employees are typically furloughed, and many contractors implement furlough programs for their own employees. Contractors must remain mindful of obligations under both federal and state wage and hour laws when placing employees on furlough. For example, a contractor that begins a furlough mid-week may consider not paying its employees for the days during that week the employees are on furlough. However, doing so for employees exempt from overtime under federal and state laws could place their exempt status in jeopardy.

With a few exceptions, to be exempt from the overtime provisions of the federal Fair Labor Standards Act ("FLSA"), an executive, administrative, or professional employee must be paid on a salary basis of at least $684 per week, regardless of the amount of work performed. Accordingly, while an employer can withhold payment for any ***full week*** in which the employee does not work, it cannot do so for any ***part of a week*** in which the employee does not work due to a furlough without jeopardizing exempt status for that work week. The economic risk of losing the overtime exemption for the week may be minimal, however, if the employee's total hours worked for the week are less than what would trigger the requirement to pay an overtime premium—*e.g.*, 40 hours under federal law. Employers should be mindful, however, that under certain circumstances, the exemption is lost not only for the employee who receives a prorated weekly salary, but for other employees in the same job classification working for the same managers.

During previous shutdowns, some contractors mitigated the foregoing risk by requiring exempt employees to use vacation pay or paid time off ("PTO") to cover compensation for non-working days during partial furlough weeks. Although this practice complies with the FLSA's exemption requirements, contractors must still ensure that they do not run afoul of state wage and hour laws. For example, some states require employers to comply with their own published leave policies. Therefore, in such states, employers should review their policies and applicable laws before mandating the use of vacation time or PTO.

Contractors should instruct employees not to perform any work while on furlough. Exempt employees who perform *any* work during a furlough week (such as checking and responding to emails) must be paid their full weekly salary or they become eligible for overtime pay, as noted above. Non-exempt employees who perform work must be paid for all time worked. For this reason, employers should clearly communicate to supervisors and employees that work may not be performed while they are on furlough. During past shutdowns, some contractors confiscated company-issued smartphones and computing devices, and restricted remote access to company systems, to ensure no work was performed.

Another approach contractors have considered during previous shutdowns is requiring exempt employees to work a reduced workweek. Contractors considering this approach must be mindful of the salary basis implications. That being said, in limited circumstances it may be permissible to adopt a reduced work-hours program during a period of economic hardship. The Department of Labor has stated in various opinion letters that "a fixed reduction in salary effective during a period when a company operates a shortened workweek due to economic conditions would be a bona fide reduction not designed to circumvent the salary basis payment. Therefore the exemption would remain in effect as long as the employee receives the minimum salary required by the regulations and meets all the other requirements for the exemption." Opinion Letter FLSA2009-18.

Before instituting such a change, however, employers must consider a number of issues, including: (1) any contractual obligations to employees; (2) state and local notice requirements for changes in compensation; (3) requirements for foreign workers on work authorizations (discussed below) and (4) compliance with other requirements for overtime exemptions (including state requirements).

The WARN Act

As noted above, the looming government shutdown also with it the prospect of furloughing large numbers of employees. These potential furloughs may implicate the federal Worker Adjustment and Retraining Notification ("WARN") Act and its state equivalents. With some exceptions, the WARN Act requires that employers provide 60 days' notice to employees affected by a "plant closing" or "mass layoff." However, depending on what a government contractor plans to do in response to the shutdown, the WARN Act may not apply.

Historically, some contractors have furloughed workers on suspended projects until they are resumed. The WARN Act applies only if there is an "employment loss," which is defined as: (1) an employment termination; (2) a layoff exceeding six months; or (3) a reduction in an employee's hours of work of more than 50 percent in each month of a six-month period. Because it is not anticipated that a government shutdown will exceed six months, for most government contractors the WARN Act will not apply. In the unlikely event that the government shutdown continues for more than four months, contractors will have to consider at that time whether to provide the notices required under the WARN Act.

However, even if the WARN Act does not apply to a government contractor's furlough program, contractors should be aware that analogous state laws may be triggered by their furloughs.

E-Verify

Government contractors are required to utilize the Internet-based employment verification system called E-Verify to confirm the employment eligibility of their new hires and current employees. The website, which is administered by the Department of Homeland Security, has historically been unavailable during government shutdowns.

If this is the case again, government contractors should complete I-9 paperwork in an accurate and timely fashion while E-Verify is unavailable. In addition, if an employee has received a "Tentative Non-Confirmation" notice from E-Verify, he or she likely will not be able to resolve the issue during the shutdown. If that is the case, the deadline for responding to the Tentative Non-Confirmation will likely be extended for the duration of the shutdown. During this period, the employer should not take any adverse action against the employee as a result of the notice.

Benefits Issues

If a government shutdown lasts longer than anticipated, there may also be certain benefits implications for furloughed employees. First, reduction in employees' hours may cause some employees to lose coverage under the employer's health plans. Affected employees would be eligible for COBRA continuation coverage, and the employer would need to send out COBRA notices. Alternatively, some employers' health plans will require continued coverage for at least some portion of the furlough. In those cases, employers would need to make arrangements for payment of the employee's share of the cost of continued coverage.

Continuation of other benefits during a furlough would depend on the plan terms. For example, it is important to review severance plans to determine whether severance obligations are triggered. In addition, continuation of life insurance, disability insurance, and other insurance benefits will depend on the plan terms.

Unemployment Benefits

Contractors should also be aware that furloughing their employees may make the employee eligible for unemployment benefits. Contractors should consult their state laws to determine the impact of furloughs on unemployment benefits.

Conclusion

The government shutdown requires many contractors to make difficult choices. Ccontractors should consult with employment counsel familiar with government contracting requirements to ensure that short-term reactions to the shutdown do not result in costly legal liabilities.

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