



## ALERTS

### Another Government Shutdown Looms: What It Means For Employers With Foreign National Employees

January 9, 2024

#### Highlights

Congress passed a continuing resolution in November to avoid a government shutdown, but only have until January 19 to reach a more permanent solution

Failure to reach a permanent budget could have broad and long-lasting consequences in the immigration space and beyond

With another shutdown looming, now is the time for employers with foreign national employees to prepare

Only two days before the deadline in November 2023, the U.S. Senate passed a temporary budget to fund federal agencies through Jan. 19, 2024, marking the first time since 2012 that Congress entered a holiday season without the threat of a December shutdown. Now, following the start of a new year, lawmakers have less than two weeks to advance [a recent spending agreement](#) and reach a more permanent solution.

The November 2023 vote marked the second time Congress extended the budget for fiscal year 2023, which expired in September, to avert a government shutdown.

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**Michael E. Durham**

Partner

South Bend, Chicago

P 574-237-1145

F 574-237-1125

[mdurham@btlaw.com](mailto:mdurham@btlaw.com)

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## Impact on Immigration

For employers, immigration funding and legislation are top of mind whenever a shutdown looms. Each time the government is on the verge of a shutdown, employers must identify cases that are affected and attempt to locate an avenue to mitigate the impact of the potential shutdown. This increases costs and reduces efficiency, among other complex consequences.

During the 2019 government shutdown, the U.S. Department of Justice suspended 60,000 [hearings for non-detained migrants](#), causing significant delays in the immigration system. Rescheduling an appearance on the immigration docket can often take years, leaving migrants and their families to wait in uncertainty in the interim.

On the employment-based side of immigration, a mad dash ensues each time a government shutdown becomes imminent because applications made to the Department of Labor that are critical steps in both nonimmigrant and immigrant visa categories come to a halt. With already lengthy processing times, foreign national beneficiaries and their employers cannot afford to wait 90 days, as we saw in 2019, for government processing to resume.

Employers and their legal teams would be wise to shift their focus during these times to pushing forward the submission of as many Labor Condition Applications (LCAs), permanent labor certification applications (PERM), and prevailing wage determination requests as possible. A missed window of opportunity can result in years-long delays, or worse, the loss of work authorization, for critical foreign national talent in the U.S.

## How to Prepare

With deadline déjà vu, now is the time for employers to prepare. Employers should consider the following three actions:

- 1) Submit Labor Condition Applications for all foreign nationals with a nonimmigrant visa (NIV) status expiring within the next six months, should the relevant nonimmigrant visa category require an application, such as for H-1B, H-1B1, and E-3 visa classifications
- 2) Submit Prevailing Wage Requests for all initiated PERM processes
- 3) File any PERM applications of individuals for whom the requisite recruitment steps and waiting periods have been completed

For more information, please contact the Barnes & Thornburg attorney with whom you work or Michael Durham at 574-237-1145 or [mdurham@btlaw.com](mailto:mdurham@btlaw.com). This alert was co-authored by Tieranny Cutler, independent contract attorney.

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