

# Shutdown Strategies: How Contractors Can Effectively Manage the Shutdown

**Kara Ariail, Esq., Eric Crusius, Esq., Tom Davis, Esq., and Bob Tompkins, Esq.**

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**Holland & Knight**

# Today's Speakers

## Tom Davis



**Tom Davis** is a Partner in Holland & Knight's Washington, D.C. office and a member of the firm's Public Policy & Regulation group. Mr. Davis represented Virginia's 11<sup>th</sup> Congressional District, with over 54,000 Federal Employees and 100,000 Government Contractors, for 14 years.

Mr. Davis was Chairman of the National Republican Congressional Committee (NRCC), an elected leadership post and campaign arm of the House GOP, for two terms. He also served as Chairman of the House Oversight and Government Reform Committee for two terms and Ranking (minority) member for one term where he oversaw investigations and has jurisdiction over House Federal Contracting and the Civil Service.

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### Education

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### Bar Admission

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# Today's Speakers

## Robert K. Tompkins



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# Today's Speakers

## Eric S. Crusius



**Eric Crusius** is an attorney who focuses his practice on a wide range of government contract matters, including bid protests, claims and disputes, compliance issues (including cybersecurity and labor) and sub-prime issues and manages high-stakes complex commercial litigations.

Eric has appeared as a guest on Fox News, Government Matters TV, NPR, Federal News Radio and has been quoted in numerous publications including Newsweek, Washington Lawyer and the Washington Business Journal.

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## Kara M. Ariail



**Kara M. Ariail** is a partner in Holland & Knight's Tysons office. She practices in the area of employment law counseling and litigation. Ms. Ariail works closely with employers in a range of industries to provide ongoing counseling and training designed to minimize the risk of litigation and maximize employee retention and productivity. She regularly advises clients on a wide range of employment issues, including successful hiring, employee performance management and termination strategies; development and implementation of anti-harassment and other personnel policies; evaluating reasonable accommodation obligations under the Americans with Disabilities Act and state disability laws; achieving compliance with the Family and Medical Leave Act; and wage and hour compliance.

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# Shutdown Strategies

## Agenda

- » **Overview of the Current Political Situation**
- » **The Anatomy of a Shutdown**
  - **Relevant FAR and Government Contracts Legal Authorities**
  - **The Contractor's Action Plan**
- » **Labor and Employment Issues**
- » **Closing and Q&A**

# Overview of the Current Political Situation

*with Tom Davis*

# Shutdowns 101

*The Anatomy of a Shutdown*



# Shutdown Strategies

## Shutdowns 101: The Anatomy of a Shutdown

- Agencies may not operate without appropriated funds:
  - Article 1, Section 9, clause 7 of the United States Constitution provides that “[n]o money shall be drawn from the treasury, but in consequence of appropriations made by law.”



# Shutdown Strategies

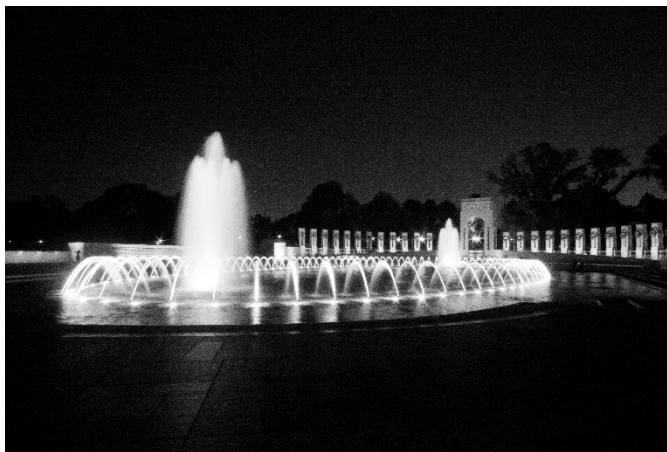
## Shutdowns 101: The Anatomy of a Shutdown

- Agencies may not operate without appropriated funds:
  - The Anti-Deficiency Act provides that the Government may not (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law...”

# Shutdown Strategies

## Shutdowns 101: The Anatomy of a Shutdown

- The Government may not accept voluntary services:
  - The Antideficiency Act provides that “[a]n officer or employee of the United States Government...may not accept voluntary services...”



# Shutdown Strategies

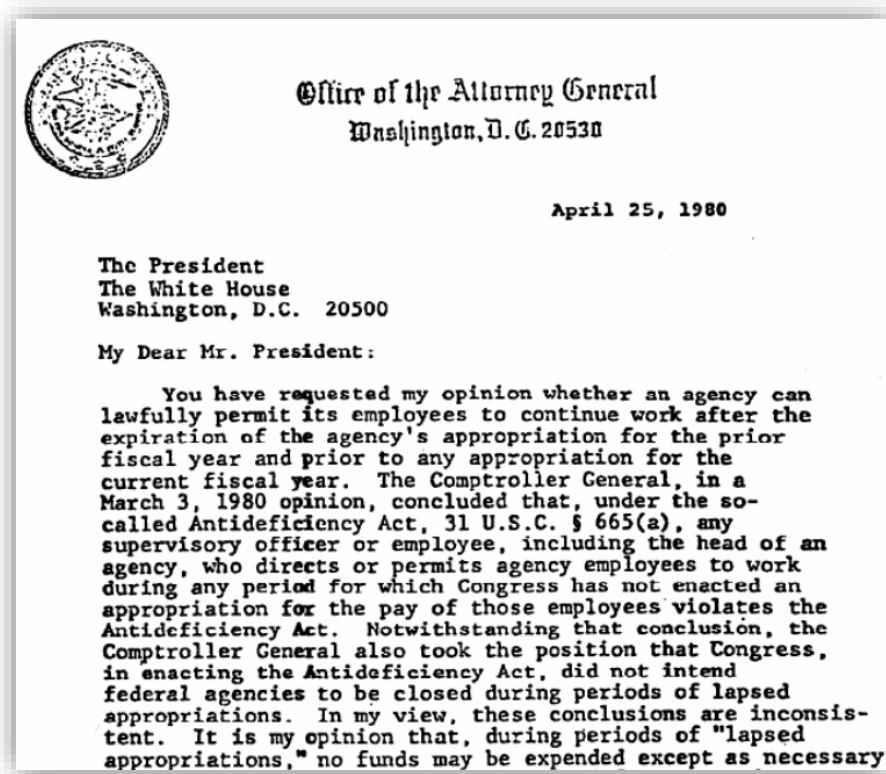
## **Shutdowns 101: Learning from the Past**

- Between FY1977 and FY1980, there were six funding gaps ranging from 8 to 17 days.
- Prior to FY1981, it was the Government's opinion that operations could continue as normal during these funding gaps.
- This changed after FY1981 with the Civiletti Memorandum written by Attorney General Benjamin Civiletti.

# Shutdown Strategies

## Shutdowns 101: Learning from the Past

- The Civiletti Memorandum was a “game changer” and emphasized that the Government could not operate without appropriated funds.



# Shutdown Strategies

## Shutdowns 101: Learning from the Past

- Civiletti concluded:
  - Approaches taken by agencies to keep agencies minimally functioning during a lapse in appropriations was “legally unsupportable.” This included employee pay obligations.
  - Unless there is an exception in the Anti-Deficiency Act, agencies may not incur further obligations even if doing so “would avoid greater costs to the agencies...”
  - DOJ “will take actions to enforce the criminal provisions of the Act in appropriate cases...”

# Shutdown Strategies


## **Shutdowns 101: Learning from the Past**

- The Antideficiency Act was subsequently amended to clarify an exception:
  - The prohibition against spending did not include emergency situations, but “...the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.” 31 USC § 1342

# Shutdown Strategies

## Shutdowns 101: Learning from the Past

- In 1995, Assistant AG Walter Dellinger issued an opinion regarding the scope of the emergency exception to the Anti-Deficiency Act.



U. S. Department of Justice  
Office of Legal Counsel

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Office of the Assistant Attorney General. *Washington, D. C. 20530*

August 16, 1995

**MEMORANDUM FOR ALICE RIVLIN  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

From: Walter Dellinger *WED/uc*  
Assistant Attorney General

Re: Government Operations in the Event of a Lapse in Appropriations



# Shutdown Strategies

## Shutdowns 101: Learning from the Past

- Dellinger's opinion has been interpreted broadly:
  - Besides law enforcement and other individuals necessary to protect property and life and limb, individuals necessary for the private economy could continue to work including air traffic controllers and meat inspectors.



# The Contractor's Tool Kit

**FAR Provisions and Clauses and Other Legal Authority**  
*with Bob Tompkins*

# Shutdown Strategies

## Impact on Contracts

- This presentation focuses primarily on procurement contracts
- The shutdown could impact other significant contracting/agreement programs at the affected agencies, including:
  - Grants and cooperative agreements
  - HUD: housing assistance payment contracts to project owners
  - Indian Self-Determination and Education Assistance Act (ISDEAA) “Section 638” Contracts with Tribes and Tribally-owned entities (i.e.
  - Federal Real Estate Leases
- We are happy to address questions about these and other programs off-line.

# Shutdown Strategies

## Impact on Contracts

- Remember the basic rule: Agencies cannot incur obligations in advance of, or that exceed, an appropriation.
- This means where an appropriation has lapsed, an agency cannot incur new obligations – including new contracts, task orders or exercising options on contracts except in very limited circumstances.
- With respect to existing procurement contracts, a key threshold question is: to what extent have funds been obligated to the contract?
- So how do you figure this out?

# Shutdown Strategies

## Impact on Contracts

- FAR Subpart 32.7 requires the government to either fully or incrementally fund all fixed-price and cost-type contracts.
- This FAR subpart, and the clauses it prescribes, implement and are bounded by the Anti-Deficiency Act.
- The FAR contains a number of clauses addressing “Limitation of Costs” and “Limitation of Funds.”
- Assess your contract type, the funds presently obligated, and the relevant FAR clauses in your contract (i.e. the 52.232.xx clauses)
- Don’t forget the Prompt Payment Act (discussed below)!

# Shutdown Strategies

## Impact on Contracts

- What if these ADA and FAR requirements are not followed and work continues without obligated funding?
- The Contractor is likely providing improper “voluntary services” (see discussion above) and is “at risk.”
- The Contracting Officer may be committing administrative or even criminal violations by accepting voluntary services.
- The practical quagmire: what if the Government tacitly encourages continued performance or simply goes silent?

# Shutdown Strategies

## Impact on Contracts

- Even if a Contract is funded there are other potential impacts of the shutdown that may disrupt the contract, including:
  - The Agency lacks funds to administer the contract
  - The Agency lack of funds makes acceptance of the services impossible or meaningless (i.e. the federal building where the services are to be performed is closed)
  - The Agency lacks funds to carry out administrative functions, like paying the contractor
- See OMB website for Agency – specific shutdown plans:  
<https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/>
- All of these considerations create additional layers of risk for contractors (and grantees)

# Shutdown Strategies

## Impact on Contracts

- There are other impacts that implicate the contracting process, including:
- Per its shutdown plan: SBA: will stop reviewing and approving applications, such as 8(a) applications, mentor-protégé applications and 8(a) joint venture agreements. (But HUBZone applications may continue)
- State Department: export control licenses and related support from the Directorate of Defense Trade Controls are “significantly curtailed.”
- Rule-making processes (i.e. FAR and SBA) are suspended.



Will my contract be impacted?

If so, how?

# Shutdown Impacts on Contracts

- **Undertake a Contract-by-Contract Review (See Eric's Action Plan below)**
- **Was Your Contract Previously Funded** for the Duration of the Shutdown? Or Not?
- **Did You Receive a Notice or Other Direction to Stop or Suspend Work** from the Government?

## Key FAR Clauses

- 52.242-14 (Suspension of Work)
- 52.242-15 (Stop Work Order)
- 52.242-17 (Government Delay of Work)
- 52.243-1 (et seq.) (Changes)
- 52.232-5, Prompt Payment

# Shutdown Impacts on Contracts

- **Even if No Stop Work Order was Issued, Was Performance Impeded by the Shutdown?**
  - Inability to access Contracting Officers and furloughed Government personnel?
  - Inability to access Government facilities or property?
  - Delayed payments of invoices even though the contract is funded?
  - Efforts to mitigate increased costs imposed by the shutdown?
  - Did the contractor give prompt notice of delays or increased costs caused by these “constructive changes” in performance requirements?

What costs may a contractor seek to recover?

# Potentially Recoverable Shutdown Costs

- **Direct costs**

- Costs incurred to maintain **employees**, **facilities**, **equipment** idled by the shutdown that are ***reasonably necessary to immediately resume work when stop work is rescinded*** (subject to **reasonable efforts to mitigate** those costs)
  - Includes **salaries and benefits** *actually incurred* to maintain employment
- Costs incurred for **demobilization and re-mobilization activities** caused by stop work and resumption of work
- **Claims by subcontractors** for any of the above (subject to actual subcontract liability and reasonable efforts to mitigate those costs)

# Potentially Recoverable Shutdown Costs

- **Direct costs**

- Ideally, costs should be **tracked and documented in a “stop work” account** established at the time of the work stoppage.
- **Helpful case:** *Raytheon STX Corp.*, GSBCA No. 14296-COM, 00-1 BCA ¶ 30632, 1999 WL 997035 (Oct. 28, 1999) (reasonable costs incurred by prime contractor and subcontractor to maintain readiness of workforce to resume performance after stop work order rescinded was allowable as an equitable adjustment to the contract cost)

# Potentially Recoverable Shutdown Costs

- **Indirect Costs**

- **Cost reimbursement contracts:** Overhead, G&A, and reasonable fee on direct costs
- **Firm-Fixed-Price Contracts:** Any re-allocation of unabsorbed indirect costs *originally priced in contract* reasonably necessary to make the contractor whole.

# Potentially Recoverable Shutdown Costs

- **Other Items**

- **Cost of preparing a payment request:** In some cases, costs of professional assistance to prepare REA
- **Prompt Payment Act** Interest on past due invoices (see below)



# Clause-Specific Timeframes and Format for REAs and Claims

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-15 – Stop-Work Order (Aug 1989)**
  - “Upon receipt of the order, the Contractor shall immediately comply with terms and **take all reasonable steps to minimize the incurrence of costs allocable to the work** covered by the order during the period of work stoppage.”
  - “If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, **the contractor shall resume work.**”

**Mitigation vs. Readiness:** Contractors may continue to incur costs reasonably necessary to maintain ability to immediately resume work *if alternative work is unavailable.*

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-15 – Stop-Work Order (Aug 1989)**
  - “The Contracting Officer **shall make an equitable adjustment** in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if-
    - (1) The stop-work order **results in an increase in the time required for, or in the Contractor’s cost properly allocable to the performance** of any part of this contract; and
    - (2) **The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage**; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.”

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-14 – Suspension of Work (Apr 1984)**
  - “If the performance of all or any part of the work is, **for an unreasonable period of time**, suspended, delayed, or interrupted by (1) an act of the Contracting Officer in the administration of this contract . . . **an adjustment shall be made for any increase in the cost of performance** of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly.”
  - **Does not apply to** (1) delays caused by the negligence of the contractor or (2) *for which an equitable adjustment is provided for or excluded under any other term or condition of the contract.*

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-14 – Suspension of Work (Apr 1984)**
  - “A claim under this clause shall not be allowed-
    - (1) For any **costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing** of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
    - (2) Unless the **claim, in an amount stated, is asserted in writing as soon as practicable** after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-17 – Government Delay of Work (Apr 1984)**
  - “If the performance of all or any part of the work is delayed or interrupted (1) **by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract . . . an adjustment (excluding profit) shall be made for any increase in the cost of performance** of this contract caused by the delay or interruption, and the contract modified in writing accordingly.”
  - “Adjustment shall also be made in the **delivery or performance dates** and any other contractual term or condition affected by the delay or interruption.”
  - **Does not apply to** (1) delays caused by the negligence of the contractor or (2) *for which an adjustment is provided for or excluded under any other term or condition of the contract.*

# Clause-Specific Remedies and Timeframes

- **FAR 52.242-17 – Government Delay of Work (Apr 1984)**
  - “A claim under this clause shall not be allowed-
    - (1)For any **costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing** of the act or failure to act involved; and
    - (2)Unless **the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the date of final payment under the contract.”**

# Clause-Specific Remedies and Timeframes

- **FAR 52.243-1 – Changes-Fixed-Price (Aug 1987) – Alt I**
  - **The CO may make written changes** within the general scope of the contract in any one or more of the following: (1) description of services; (2) time of performance; or (3) place of performance.
  - “If any such change causes an **increase or decrease in the cost of, or the time required for**, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer **shall make an equitable adjustment in the contract price, the delivery schedule, or both**, and shall modify the contract.”



# Clause-Specific Remedies and Timeframes

- **FAR 52.243-1 – Changes-Fixed-Price (Aug 1987)**
  - “The Contractor must **assert its right to an adjustment** under this clause **within 30 days** from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.”
  - “**Failure to agree to any adjustment shall be a dispute under the Disputes clause.** However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.”

# Clause-Specific Remedies and Timeframes

- **FAR 52.232-5 -- Prompt Payment (Jul 2013)**
- The Prompt Payment Act (PPA) requires the Government to pay contractors interest on invoices properly submitted for work performed and accepted that go unpaid more than 30 days after submission.
- The FAR also contains enhanced prompt payment requirements for small business contractors which may provide for payment in as little as 15 days.
- In the not too distant past PPA remedies were not very significant because interest rates were low. That has now changed and interest obligations could become quite significant particularly if delays in payment become substantial.
  - The Current PPA interest rate is **4.875% through December 31, 2023.**
  - Per the PPA clause, the Government is supposed to automatically calculate and pay this interest if their payments exceed the PPA deadlines.
  - If you do not receive PPA interest as required, remind the contracting officer of the Government's affirmative obligations
  - **Document** timing of acceptance of work and submission of proper invoices to establish the date on which interest penalties will begin to accrue.

# The Contractor's Action Plan

**with Eric Crusius**

# Shutdown Strategies

## The Contractor's Action Plan

- Step 1: Review Contracts
  - Determine Contract type, how funded and which FAR clauses are included
  - Understand Funding Source
    - Annual Authority (Default)
    - Multiyear Authority
    - “No-year” authority
    - Fees or other non-Congressional source?
    - Was it fully executed and fully funded prior to lapse?

# Shutdown Strategies

## The Contractor's Action Plan

- Step 1 (continued): Review Subcontracts and Vendor Agreements:
  - Do they address a shutdown or otherwise address government terminations or stop work?
  - What Notice requirements are included?
  - What do they provide in terms of payment -- i.e. do they provide for “pay-when-paid” or something else?

# Shutdown Strategies

## The Contractor's Action Plan

- Step 2: Review communications from the Contracting Agency
  - Only an authorized Contracting Officer or representative can issue a Stop Work Order (complete or partial), or a Termination for Convenience
  - If there is no communication from the Contracting Officer regarding work, contractor must proceed so long as the contract has remaining funds and subject to the FAR clauses included.
  - If formally directed to stop work, wind down and stop. Advise subcontractors in writing. Document all of this.

# Shutdown Strategies

## The Contractor's Action Plan

- Step 2 (continued):
  - If formally directed to stop work, wind down and stop.
  - Advise subcontractors in writing immediately.
  - Follow up with the Contracting Officer and Subcontractors in writing to confirm compliance.
  - Track costs of all of this.
  - Document all of this.

# Shutdown Strategies

## The Contractor's Action Plan

- Step 3: Even if contract funding remains in place, determine whether work can logistically continue and what other impacts you will face:
  - Is a Government workplace necessary to continue working?
  - Are Government employees necessary to continue working or accept deliverables?
  - Are Government employees available to perform contract administration functions including making payments?
- Advise the contracting officer in writing of any such potential disruptions.



# Shutdown Strategies

## The Contractor's Action Plan

- Step 4: Determine status of employees
  - Are they overseas or elsewhere? Does it make sense to have them come home?
  - What is their employment status?
  - Employee-related issues will be addressed later in the presentation.

# Shutdown Strategies

## The Contractor's Action Plan

- Step 5: Understand cost and expense Issues
  - Set up separate cost centers for expenses related to winding down (and starting up operations) and advise subcontractors to do the same
  - Understand impact on indirect rates
  - Mitigate costs
  - Document everything

# Shutdown Strategies

## The Contractor's Action Plan

- Step 6: Be aware of other potential practical issues
  - Proposal submission dates and awards may change (but may not)
  - E-Verify could be unavailable; may not be able to onboard new employees
  - SBA is impacted; certifications may not be approved

# Shutdown Strategies

## The Contractor's Action Plan

- Step 7: Continue to prosecute protests and claims
  - Debriefing deadlines are statutory and not automatically extended
  - Statutes of Limitation may not be impacted by the shutdown; filings may still need to be made
  - GAO is open; deadlines remain but some cases are suspended because agency counsel is unavailable
  - COFC is open for now, but DOJ Attorneys may be are furloughed and stays may be granted on a case-by-case basis
  - Agency claim deadlines remain

# Shutdown Strategies

## The Contractor's Action Plan

- Step 8: Contact your banker
  - Review financial situation
  - Be mindful of covenants in banking agreements – stop work or lack of payment can trigger obligations to your lender
  - Contact your banker to determine whether line of credit is available and to work through covenants and other issues

# Shutdown Strategies

## The Contractor's Action Plan

- Step 9: Stay current
  - Agencies are individually releasing guidance on what will be open/running
  - OMB released a memo on 9/22/23 that speak to the particulars Bob talked about
  - The OMB memo confirmed that contractors and grantees will not be paid even if performing exempted work, for instance

# Shutdown Strategies

## The Contractor's Action Plan

- Step 10: When the shutdown ends, be prepared to start work quickly and seek reimbursement
  - Document stop work and start-up expenses
  - Submit request for expenses related to the shutdown
    - REA or via changes clause
    - Employees costs and overhead
  - Communicate with employees
  - Invoice for prior work and consider whether additional interest payments are due

# Labor and Employment Issues



# Labor and Employment Issues

## » NOTIFYING EMPLOYEES THEY CAN'T WORK

- WARN Act not likely to apply.
- Under the Act, “employment loss” is defined as:
  - (A) an employment termination, other than a discharge for cause, voluntary departure, or retirement,
  - (B) a layoff exceeding 6 months, or
  - (C) a reduction in hours of work of more than 50 percent during each month of any 6-month period.
- Even after six months, “unforeseen business circumstances” exception to providing notice, may apply.
- Ensure you are familiar with state law requirements (mini-WARN)

# Labor and Employment Issues

## » WAGE AND HOUR ISSUES

- Temporary layoffs of exempt employees must be managed carefully
  - Under FLSA, if an exempt employee performs any work in a single workweek, the employer may not deduct from the employee's salary for a **partial workweek** not worked as a result of a temporary layoff
    - Applies when employee is available to work but works reduced/partial hours because the employer does not make work available
  - Exempt employees may be placed on unpaid leave for **full workweeks** in which they perform no work
    - Responding to even one email jeopardizes the full workweek exception to deductions from exempt employee pay
    - Give clear written instructions regarding expectations that no work will be performed
    - Consider holding onto work computers/phones, disabling email and network
    - Ensure essential job duties of employees on temporary layoff are assigned to another employee who is not laid off

# Labor and Employment Issues

## » WAGE AND HOUR ISSUES

- Managing employee layoffs with accrued Paid Time Off
  - Under the FLSA, so long as an exempt employee receives their full salary, an employer may impose a mandatory deduction from an exempt employee's paid time off balance for a full or partial day absence resulting from a temporary layoff
  - Ensure state practice is permitted under applicable state law
    - Do not require use of separately accrued sick leave and be aware of applicable paid sick and safe leave laws if such leave is combined with PTO
  - Review employer policies for contrary representations
  - Tread carefully with advanced leave/ negative accruals
  - Consider impact on employee morale
    - Option: require employees to use PTO for partial furlough weeks, but give employees the option for full furlough weeks
- No wage payment issues for non-exempt employees
  - Under the FLSA, pay is required only for hours worked

# Labor and Employment Issues

## » BENEFITS ISSUES

- Is continued coverage allowed under your health insurance plan?
  - Many plans will not carry employees who have been “inactive” for more than thirty days
  - Employees may need to be informed of their COBRA rights and offered the option of electing COBRA continuation coverage
- Ensure you understand legal implications of covering employee portion of benefit premiums and seeking repayment when employees return to work
  - May depend on whether your plan is fully insured or self-insured
- Under state law, employees on temporary layoff as a result of a government shutdown may be eligible for unemployment insurance benefits
  - Do not advise employees on eligibility, make predictions about eligibility determinations or answer questions that require the interpretation of state-issued regulations
  - Refer employees to appropriate state agency for answers to any questions

# Labor and Employment Issues

## » BEST PRACTICES

- Open communication with employees is critical
  - Forced temporary layoffs can be a significant cause of poor morale for employees who are impacted by the layoffs and those who are left to complete the work
  - Morale issues negatively impact employee retention and productivity and also increase risk of seemingly unrelated legal claims
- Share plans with employees in a prompt and clear manner
  - If you do not have all the information necessary to develop and implement specific plans, let employees know you are monitoring the situation and will follow up as information becomes available
- Designate management personnel to answer questions and concerns
  - Ensure all managers and supervisors are informed of your plans and your employee communication strategies

# Labor and Employment Issues

## » OTHER EMPLOYEE RELATED CONSIDERATIONS

### » *Immigration*

- E-verify will be unavailable.
- Employers must continue to complete I-9s for new hires but United States Citizenship and Immigration Services (USCIS) will likely suspend the 3-day completion rule.
- Employers should not take any adverse action because of E-verify interim case status without consulting with immigration counsel.
- Employers should also consult with counsel regarding H-1B, H-2B and E-3 employees who are placed on a non-productive status or reduced work schedules.

### » *Union Issues*

- Employers may have to enter into mid-contract negotiations with unions if immediate layoffs and exceptions to layoff and other collective bargaining agreement provisions are required.
- Employers should consult with labor counsel prior to implementing unilateral layoffs, reductions in wages, or forced vacations.

