

UPDATED: Immigration Implications of UAW Strike and Potential Government Shutdown

October 2, 2023

UPDATED ON OCTOBER 2, 2023: Late Saturday, September 30, 2023, Congress passed, and President Joe Biden signed, a 45-day bill that will fund the federal government through November 17, 2023. With the passage of the bill, the agencies discussed in this writing remain funded, and will continue processing immigration-related matters. The Miller Canfield immigration team will continue to monitor this matter as the November 17, 2023, funding expiration date approaches.

Employers in the automotive industry should be aware of the impact the United Auto Workers strike could have on its employees with immigration considerations. A federal government shutdown is also likely, which could impact an employer's foreign national employees.

United Auto Workers Strike

The United Auto Workers (UAW) announced a strike at the "Detroit Three" automakers (General Motors, Ford, Stellantis) on September 15, 2023, which has continued to expand as of the date of this writing. Although the strike impacts only certain employees, there may be potential impacts on an employer's foreign national workers. The nature and extent of this impact depends on factors such as the foreign worker's immigration status, position, and location of employment. With that in mind, employers should consider the following potential impacts a strike may have on its foreign national employees:

- **H-1B Specialty Occupation Workers**: Generally, a strike only impacts H-1B workers if it applies to the H-1B worker's occupational classification at his or her place of employment. If this is the case, such a strike could impact an employer's ability to file new labor condition applications, prevent the employer from using an existing labor condition application, result in the denial of an H-1B petition or restrict the employer's ability to file an H-1B petition, suspend an already approved H-1B petition, and/or prevent an H-1B worker from entering the United States.
- **Canadian and Mexican Nationals in TN Status**: A strike certified by the Department of Labor could result in the refusal of a TN visa by a U.S. Consulate (Department of State), denial of a TN petition by U.S. Citizenship and Immigration Services (USCIS), or denial of admission of a TN worker by U.S. Customs and Border Protection (CBP).
- **Canadian and Mexican Nationals in E Status**: Generally, a strike only has the potential to impact workers in E status who are Canadian or Mexican nationals, and only applies if such a strike impacts the worker's occupational classification at his or her place of employment. If that is the case, the strike could negatively impact the approval of an E extension petition at USCIS, impact the issuance of an E-visa at the U.S. Consulate abroad, or prevent a worker with an E visa from entering the United States.
- **L-1 Intracompany Transferees**: Generally, a strike only has the potential to impact L-1 workers who are Canadian or Mexican nationals, and only applies if the strike is occurring at the L-1 worker's place of employment. If these factors are in place, the strike could result in the suspension of an approved L-1 petition or prevent an L-1 worker

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from entering the United States.

- **F-1 Student Workers:** An F-1 student worker cannot be used to replace a full-time or part-time temporary or permanent U.S. worker in the event of a certified strike. If a Department of Labor certified strike is in effect involving the F-1 student's occupation and place of employment, the work authorization of that F-1 student worker is automatically suspended.
- **Lawful Permanent Residents or Pending Application Towards Lawful Permanent Residency:** Generally, an ongoing strike does not impact lawful permanent residents or pending applications towards lawful permanent residency, such as PERM applications, I-140 petitions, or Adjustment of Status applications (including an approved employment authorization document that is tied to a pending Adjustment of Status application).

While the UAW strike may not apply to all or some of an employer's foreign national workers, there are certain situations where a strike could have an impact, as described above. Further, if an employer finds it necessary to layoff, reduce working hours, or terminate a foreign national worker due to the ongoing strike, such actions could raise unique considerations specific to a foreign national worker that an employer will need to consider. Employers should begin assessing these impacts now.

Federal Government Shutdown

As of the date of this writing, Congress has not passed the appropriate spending bills to keep the federal government open beyond September 30, 2023. Unless these bills are passed, some government agencies will shut down on October 1, 2023.

Immigration case processing involves several federal agencies. Below is a breakdown of how each agency will be impacted in the event of government shutdown:

- **United States Citizenship and Immigration Services ("USCIS"):** USCIS is a fee-funded agency. As a result, USCIS will be open in the event of a government shutdown, the exception being certain programs that receive appropriated funds.
- **Department of State ("DOS"):** The Department of State oversees visa operations at U.S. Consulates worldwide. In the event of a shutdown, visa and passport operations are not normally impacted, as these processes are fee-funded.
- **Department of Labor ("DOL"):** **The government shutdown would significantly impact the Department of Labor. The DOL would cease processing pending Labor Condition Applications and Applications for Permanent Employment Certification (PERM). DOL will also be unable to accept new applications during the shutdown, and its online filing systems will be inaccessible.**
- **U.S. Customs and Border Protection ("CBP"):** U.S. Customs and Border Protection is considered essential, and therefore inspection and law enforcement at the border will remain active. However, the processing of immigration applications at the border, such as TN applications, may be impacted in the event of a shutdown.

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- Immigration and Customs Enforcement (“ICE”): Immigration and Customs Enforcement operations will continue in the event of a shutdown. The Student and Exchange Visitor Program (SEVP) managed by ICE will be unaffected as it is fee-funded.
- Executive Office of Immigration Review (“EOIR”): Immigration court cases on a detained docket will proceed in the event of a shutdown, while non-detained docket cases will be reset at a later date.

Due to the potential impacts on immigration case processing in the event of government shutdown, employers should contact legal counsel to discuss how the potential shutdown could impact its new or ongoing immigration matters and foreign national workforce.

Conclusion

The ongoing strike and potential government shutdown may present unique immigration-related implications for employers and may have a major impact on an employer’s foreign national employee population.

Please contact your Miller Canfield attorney or one of the authors of this alert if you wish to further discuss how any of these matters affect your organization. This information is based on the facts and guidance available at the time of publication and may change.