**FREQUENTLY ASKED QUESTIONS ABOUT SHUTDOWN RELATED LITIGATION**

**Shutdown**

1. **How long did the shutdown last?**

It started on December 22, 2018 and ended on January 25, 2019. However, the legislation (i.e., continuing resolution) that passed on January 25 ending the shutdown only provides funding for affected agencies through February 15, 2019, or the enactment of applicable appropriations legislation, whichever is earlier. That means employees may be subjected to another shutdown in a few weeks if additional appropriations legislation is not enacted.

1. **Now that the shutdown has ended, will affected federal get paid?**

Yes. The Government Employee Fair Treatment Act (S. 24) was signed into law on January 16, 2019. The law provides that federal employees affected by the shutdown will be paid “on the earliest date possible” after the end of the shutdown, i.e., January 25, 2019. NTEU aggressively fought for this legislation, which guarantees payment for both furloughed and excepted employees.

**NTEU Lawsuits**

1. **What lawsuits did NTEU lawyers file in connection with this shutdown?**

NTEU’s lawyers filed two lawsuits on behalf of the employees that NTEU represents.

(a) One is in the U.S. Court of Federal Claims. Avalos, et al. v. United States (Fed. Cl. 2019). That suits seeks compensation under the Fair Labor Standards Act (FLSA) for NTEU-represented employees who worked during the shutdown but who were not paid on time.

(b) The second lawsuit was filed in the U.S. District Court for the District of Columbia. NTEU v. United States, et al., No.19-cv-50 (D.D.C. 2019). That suit alleges that the shutdown violated the Constitution as well as a statute called the Antideficiency Act. This suit seeks to stop the government from continuing to force employees to work without pay.

1. **Why did NTEU file two lawsuits?**

The lawsuits seek different relief. Claims against the United States for money generally have to be brought in the U.S. Court of Federal Claims. Since the FLSA suit seeks compensation for affected employees, we filed that suit in Federal Claims court. The second suit asks that the shutdown be declared unlawful under the U.S. Constitution. A constitutional lawsuit for declaratory and injunctive relief generally belongs in federal district court.

1. **If the shutdown has ended and if affected employees are going to be paid, are the lawsuits moot?**

No. NTEU’s lawsuit in the U.S. Court of Federal Claims seeks two types of compensation pursuant to the FLSA. First, it seeks back pay for employees who were not timely paid during the shutdown. This part of the lawsuit is indeed moot because payments have been made to affected employees. But the second part of the lawsuit asks for a matching amount of 100% “liquidated damages” for employees. That part of the lawsuit remains.

The FLSA provides for “liquidated damages,” a concept like interest, for the compensation that working federal employees did not receive on time during the shutdown. NTEU is asking the court for liquidated damages to (1) match any overtime that affected employees did not receive on time; and (2) match the minimum wage payment that the FLSA requires that employees receive on time. Accordingly, although employees affected by the shutdown have been paid their back pay, including overtime, NTEU will keep fighting for an additional amount of matching liquidated damages to compensate employees for this untimely payment.

In addition, NTEU’s second suit in federal district court, in which we allege that shutdowns such as this are illegal, is still pending. NTEU’s request for emergency relief was withdrawn because the shutdown ended, but NTEU intends to refile that request if another shutdown occurs.

**Opting in to NTEU’s Lawsuit**

1. **I am a federal employee represented by NTEU who worked during the shutdown but did not get paid on time. Do I need to join these lawsuits?**

Eligible employees in NTEU-represented agencies who worked during the shutdown must opt in to (or join) the FLSA lawsuit in order to become eligible for any remedy that results from that case.

Note: to be eligible to participate in the FLSA suit, employees must have worked during the shutdown. Employees must also be covered by the FLSA (that is, be FLSA “nonexempt”). You can see if you are FLSA “nonexempt” by looking at box 35, labeled “FLSA category,” on your SF-50. If box 35 has an “N,” then you are nonexempt and can participate.

NTEU has entered into an agreement with an outside law firm, Bredhoff & Kaiser, PLLC, to help with this litigation.  Bredhoff & Kaiser will serve as co-counsel for all employees who opt in to this litigation. Bredhoff & Kaiser is setting up a website to make the opt-in process as easy as possible.  The website will be operational soon.  You may also direct questions to them at [NTEU-FLSA-lawsuit@bredhoff.com](mailto:NTEU-FLSA-lawsuit@bredhoff.com) or 1- 800-240-8051.

NTEU-represented employees do not need to do anything to join the constitutional lawsuit which does not seek any monetary remedy for affected individuals.

1. **Is there a deadline to opt in to the FLSA lawsuit?**

There is no deadline yet. The court will set one at some point.

1. **If I decide to opt in and join the FLSA lawsuit, will I have to pay attorneys’ fees out of my recovery?**

Neither NTEU nor Bredhoff & Kaiser will ask any employee that they represent to pay any attorneys’ fees, either up front or out of his or her recovery.

1. **I’ve heard there are other FLSA lawsuits in the Court of Federal Claims. Must I opt in to those as well?**

No. At this point, several other FLSA lawsuits have been filed in the U.S. Court of Federal Claims. These lawsuits also seek compensation under the FLSA for employees who worked but were not paid on time, as well as liquidated damages. There is, however, no reason to opt in to more than one suit.

1. **I’ve already opted into another lawsuit. Does that matter? Do I have to withdraw from that one?**

No, you do not need to withdraw from the other lawsuit that you opted in to.

1. **Can I recover more if I opt into more than one lawsuit?**

No. Employees will not be able to recover under more than one lawsuit.

1. **How long will it take for the Court of Federal Claims case to result in payment?**

We don't know yet.  As is true in every litigation, success is not certain.  And, if we prevail in the Court of Federal Claims, the government may appeal to the U.S. Court of Appeals for the Federal Circuit.  A similar case filed in connection with the 2013 shutdown did result in a favorable judgment for employees, but calculations of amounts owed to those who joined that case have not yet been completed.

1. **I heard that the FLSA case covers only CBP employees.   Is that true?**

No.   The NTEU case is open to any FLSA nonexempt bargaining unit employee who, during the opt in period, worked during the shutdown in a unit for which NTEU serves as the exclusive representative.

1. **If I decide to opt in and join the FLSA lawsuit, could I face retaliation at my job?**

It is illegal for any employer to discharge or discriminate in any way against any employee who files a complaint and participates in an FLSA suit. If you believe that you have faced retaliation for joining NTEU’s lawsuit, contact your chapter representative immediately.

**Post Shutdown Pay**

1. **I worked both regular shifts and overtime during the shutdown. Will I be paid both my regular pay and overtime pay for the shutdown period?**

Yes. Under the Government Employee Fair Treatment Act, employees affected by the shutdown (whether they were furloughed or required to work) will receive all the back pay they are owed, including any overtime.

1. **I am a federal employee who was on furlough during the shutdown. Will I recover under these lawsuits?**

You are not entitled to receive any monetary compensation under these lawsuits. The FLSA lawsuit seeks compensation for employees who were forced to work without timely pay. The constitutional lawsuit seeks declaratory and injunction (non-monetary) relief. You will, however, receive the back pay you otherwise would have earned during the shutdown under the Government Employee Fair Treatment Act.

**Additional questions**

1. **Who do I contact with questions about the FLSA litigation?**

Employees can send questions to [NTEU-FLSA-lawsuit@bredhoff.com](mailto:NTEU-FLSA-lawsuit@bredhoff.com) or call 1-800-240-8051.

1. **In addition to filing these lawsuits, what else did NTEU do in response to the shutdown?**

NTEU worked constantly with our allies on Capitol Hill to end the shutdown and to ensure that all employees denied pay during the shutdown were fully paid. We were very pleased that Congress enacted the Government Employee Fair Treatment Act to guarantee payment for shutdown-affected employees. NTEU is going to continue that work because another shutdown is possible in a few weeks. Check the NTEU website for full information on our multi-pronged efforts regarding the shutdown.