



Pennsylvania Conference of Teamsters

Strength in Numbers 95,000

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LEGISLATIVE ACTION ALERT

Federal Judge refuses to force government to pay federal employees working without a paycheck during shutdown

According to an article in **The Hill** © A federal judge refused to issue an order that would have forced the federal government to temporarily compensate federal workers during the government shutdown with pay.

Judge Richard J. Leon, a George W. Bush appointee on the U.S. District Court for the District of Columbia, declined to issue the temporary restraining order federal employees unions had asked for in separate lawsuits challenging the partial shutdown, which is now in its 25th day.

In a ruling from the bench, Leon said only Congress can appropriate funds, adding that “the Judiciary is not, and cannot be, just another source of leverage,” according to MSNBC. He also said it would “profoundly irresponsible to issue an order that would result in thousands of employees staying home from work,” The Washington Post reported.

The National Air Traffic Controllers Association (NATCA) and the The National Treasury Employees Union (NTEU) brought lawsuits challenging the shutdown on behalf of their members.

A temporary restraining order only last about 14 days. The parties will now go back to court to argue over whether the court should issue a longer order that would force the government to pay its employees while the merits of the case are argued in court.

NATCA's suit alleged the government is violating the Fifth Amendment of the Constitution because it's unlawfully depriving members of their earned wages without due process.

NTEU, meanwhile, claims workers are being forced to work under a law that's unconstitutional. Under the Constitution, they say, no funds can be drawn from the Treasury with without a congressional appropriation, but the Antideficiency Act purports to authorize the executive branch to obligate funds that have not been appropriated.

Leon ordered the government to respond to the unions' requests for this preliminary injunction by next Tuesday and for the unions to file a response by January 28, 2019. He then set a hearing on the request for a preliminary injunction for January 31, 2019

A federal judge agreed the Fair Labor Standards Act required all federal employees to be paid on time for their services and in 2017 ruled the workers were entitled to more than twice their back pay for the violation.

According to the **National Law Journal** © a federal labor union has sued the United States government for failing to pay “essential” workers during a government shutdown. The American Federation of Government Employees announced a suit ten days after a budget dispute over border security and wall spending

shuttered government offices and placed 380,000 federal employees on unpaid leave. The lawsuit was filed in the U.S. Court of Federal Claims.

However, 420,000 workers—including many at the Department of Homeland Security and the Justice Department—have been required to work without pay because their positions involve performing emergency work dealing with the “safety of human life or the protection of property.”

The AFGE and attorneys from the Washington-based law firm Kalijarvi, Chuzi, Newman & Fitch said in the complaint that the government’s refusal to pay the essential employees violates the Fair Labor Standards Act and that employees are entitled to liquidated damages for any unpaid work performed during the shutdown.

The case, filed on behalf of two federal corrections officers, is headed by Kalijarvi Chuzi partner Heidi Burakiewicz, who also represented 25,000 essential federal employees affected by a government shutdown in 2013. A federal judge agreed the FLSA required all federal employees to be paid on time for their services and in 2017 ruled the workers were entitled to more than twice their back pay for the violation.

Burakiewicz called the situation a “blatant violation” of the FLSA. She said the harm to her clients began the “first moment of the shutdown,” and that essential employees would be forced to continue their work with no idea when they would be paid. “This is not an acceptable way for any employer, let alone the U.S. government, to treat its employees,” Burakiewicz said. “These employees still need to pay childcare expenses, buy gas, and incur other expenses to go to work every day and yet, they are not getting paid.”