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**THE UNCOMPENSATED RISK: FEDERAL WORKERS' COMPENSATION AND THE  
HUMAN TOLL OF THE WEAPONIZED SHUTDOWN**

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JANUARY 29, 2026

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## **I. INTRODUCTION: THE BROKEN PROMISE OF STABILITY**

The American social contract relies upon a traditional presumption that hard work results in stability. It is a deeply rooted belief in our nation's origin that labor, performed with integrity, will be met with the reliability of compensation. For federal employees—the individuals who staff our borders, secure our airways, and manage our veterans' healthcare—this presumption implies that the demands of their public service will be matched by the government's commitment to their livelihood. However, during the latter part of 2025, this contract was severed. The United States endured a government shutdown lasting forty-three days, a record-breaking paralysis that ground the administrative machinery of the state to a halt. Yet, amidst the silence of closed agencies, the demands on the essential workforce did not cease.

The timing of this article is driven by the urgency of that crisis. As a law student observing the collapse of administrative norms, it became evident that the shutdown was not merely a fiscal pause or a political maneuver; it was a humanitarian crisis for the federal workforce. While political theater played out in Washington, a silent desperation emerged in the homes of federal employees. Families faced empty cupboards, missed mortgage payments, and the psychological trauma of financial abandonment. The shutdown caused significant tension within the employment sector, defying the basic tenet that if one is hired for a job, they will be paid for their work.

This tension manifested visibly in our airports, where terminals faced significant delays as Transportation Security Administration (TSA) agents and air traffic controllers, pushed to their breaking point, began to resign or call in sick. It manifested invisibly in the households of service members who could not put food on the table. The "rabbit hole" of poverty, once entered,

is difficult to escape; a missed paycheck leads to a missed bill, which leads to damaged credit and potential eviction.

As of January 2026, the threat looms again. The government is currently operating on a temporary measures, with a deadline of January 30, 2026, to pass a new funding bill. If these protocols are not met, the nation will slide back into a partial shutdown. This precarious reality raises a critical legal question that remains unanswered by current statutes: **What happens when the government breaks its own safety net?**

This article examines the intersection of the Anti-deficiency Act and the Federal Employees' Compensation Act (FECA). It argues that the current legal framework fails to account for the unique vulnerabilities created by a "weaponized" shutdown. When the government bifurcates its workforce into "furloughed" and "excepted" classes, it creates a dangerous gap in workers' compensation coverage, effectively stripping employees of their protection exactly when they are most vulnerable to stress-induced and workplace injuries. To remedy this, Congress must enact a statutory modification to FECA—a federal mandated statute—that explicitly defines coverage parameters during a lapse in appropriations. Workers should have a "ruler book," a set of clear guidelines they can refer to during a crisis, ensuring that those who serve the state are not abandoned by it.

## **II. THE ANATOMY OF A LAPSE: FROM ADMINISTRATIVE BLIP TO WAR OF ATTRITION**

To understand the workers' compensation implications of a shutdown, one must first analyze the mechanism that triggers it. The foundation of the shutdown lies in the United States Constitution, specifically the Appropriations Clause, which forbids the Treasury from spending

money without a specific appropriation by law.<sup>1</sup>When Congress fails to pass a funding bill, the executive branch loses its legal authority to satisfy financial obligations. To enforce this, the **Antideficiency Act** engages, making it a felony for an agency to obligate funds or for a manager to accept "voluntary services."<sup>2</sup>

### **A. The Evolution of Dysfunction: 1995 to 2025**

Government shutdowns were not always the high-stakes political theater we witness today. Prior to the 1990s, funding gaps were often brief, administrative blips that were resolved over weekends with minimal disruption to the public. The political landscape shifted dramatically in the winter of 1995–1996 during the clash between President Bill Clinton and Speaker of the House Newt Gingrich.

The 1995 shutdown was a philosophical war over the size of the federal government. Speaker Gingrich’s coalition sought to drastically shrink the federal state, targeting Medicare and environmental regulations. President Clinton refused to sign the budget cuts, leading to two separate shutdowns, the second of which lasted twenty-one days.<sup>3</sup> At the time, a three-week closure was considered shocking and unprecedented. The resolution came only when the political cost became too high; the public blamed the congressional leadership for closing National Parks and stopping passport processing.

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<sup>1</sup> U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law...").

<sup>2</sup> 31 U.S.C. §§ 1341(a)(1)(A)–(B), 1342 (2018).

<sup>3</sup> See generally Clinton T. Brass et al., Cong. Rsch. Serv., RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects* (2024).

By late 2025, however, the shutdown had evolved from a negotiation tactic into a weapon of grinding attrition. The shutdown that spanned October and November of 2025 lasted forty-three days, shattering previous records.<sup>4</sup> Unlike the ideological battles of 1995, the 2025 shutdown was driven by specific policy riders—non-budgetary demands attached to spending bills. The resolution was not a grand bargain, but a "partition." Congress passed a "Minibus" package, successfully funding specific departments like the Veterans Affairs (VA), the Food and Drug Administration (FDA), and the Department of Agriculture through September 2026.<sup>5</sup>

## **B. The Current State of Partial Uncertainty**

This partition explains the "partial" nature of the threat facing the nation in January 2026. While the VA and FDA are "safe," agencies such as the Department of Homeland Security, the Department of Justice, the Department of Commerce, and the Department of the Interior remain operating on a Continuing Resolution (CR) that expires on January 30.<sup>6</sup>

This creates a fragmented workforce. An employee at the VA may be secure in their paycheck, while their neighbor working for the Border Patrol faces the immediate threat of working without pay. This disparity creates a unique psychological stressor on the "at-risk" workforce, a factor that workers' compensation law must begin to account for.

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<sup>4</sup> Kaia Hubbard, *How the Longest Government Shutdown in History Came to an End*, CBS News (Nov. 13, 2025), <https://www.cbsnews.com/news/how-the-longest-government-shutdown-in-history-came-to-an-end>.

<sup>5</sup> *House Clears Short-Term Funding Bill to End Government Shutdown*, Nat'l Ass'n of Student Fin. Aid Adm'rs (Nov. 13, 2025), <https://www.nasfaa.org/news-item/37650>.

<sup>6</sup> *Assessing FY 2026 Appropriations*, Comm. for a Responsible Fed. Budget (Jan. 15, 2026), <https://www.crfb.org/blogs/assessing-fy-2026-appropriations>.

### III. THE LEGAL FRAMEWORK: THE BIFURCATION OF THE WORKFORCE

The terms "essential" and "non-essential" do not appear in the Antideficiency Act. They are derived from two famous Attorney General opinions, known as the "Civiletti Opinions," issued in 1980 and 1981. These opinions provide the legal architecture for how the government functions—or fails to function—during a lapse.

#### A. The "Shut it Down" Rule (1980)

The 1980 Opinion established the strict interpretation that, upon a lapse in appropriations, agencies must immediately cease operations.<sup>7</sup> This opinion created the class of the **furloughed worker**. These individuals are sent home without pay and are strictly prohibited by 31 U.S.C. § 1342 from providing "voluntary services." This prohibition is not merely a suggestion; it is a criminal statute designed to prevent the executive branch from coercing employees to work for free, which would theoretically obligate Congress to pay them later.

#### B. The "Safety of Life" Exception (1981)

The 1981 Opinion softened the blow by interpreting the Antideficiency Act to allow for the continuance of functions necessary to protect the safety of human life or property.<sup>8</sup> This opinion created the class of the **excepted (or essential) employee**. These workers include TSA agents, Border Patrol officers, federal prison guards, and active-duty military personnel.

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<sup>7</sup> *Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations*, 43 Op. O.L.C. 16 (1980).

<sup>8</sup> *Authority for the Continuance of Gov't Functions During a Temp. Lapse in Appropriations*, 5 Op. O.L.C. 1 (1981).

The legal status of the excepted employee is paradoxical. They are mandated to report for duty to ensure the safety of the nation, yet the government is legally barred from paying them until the shutdown ends. They are, in effect, conscripted into service by their oath of office, working under the threat of termination if they fail to report, yet receiving no compensation for their labor. This status raises profound questions regarding the "presumption of payment" inherent in employment contracts and sets the stage for complex workers' compensation disputes.

#### **IV. THE FECA GAP: JURISDICTION AND THE "PERFORMANCE OF DUTY"**

The Federal Employees' Compensation Act (FECA) is the exclusive remedy for federal employees injured on the job.<sup>9</sup> Unlike private sector employees who are subject to state workers' compensation laws, federal employees cannot sue the government for negligence. In exchange for this immunity, the government promises a "Grand Bargain": guaranteed, no-fault insurance coverage for any injury sustained in the performance of duty.

However, the weaponized shutdown breaks this bargain. FECA coverage is predicated on the employee being in the "course and scope" of their employment, or more specifically, in the "performance of duty."<sup>10</sup> The shutdown destabilizes this definition for both classes of workers.

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<sup>9</sup> 5 U.S.C. § 8101 *et seq.*

<sup>10</sup> 5 U.S.C. § 8102(a).

### **A. The Furloughed Worker and the "Volunteer" Trap**

For the furloughed worker, the shutdown creates a perilous legal trap. Because the Antideficiency Act expressly prohibits them from working, any work they perform is technically "ultra vires"—outside the authority of the law.

Consider the dedicated case worker who, knowing a beneficiary is in dire need, logs onto their laptop from home during the shutdown to send a critical email. If this employee develops a repetitive strain injury or suffers a stress-induced cardiac event while performing this unauthorized work, the Department of Labor (DOL) faces a jurisdictional dilemma. The agency had explicitly ordered the employee *not* to work. Therefore, the government can argue that the employee was not acting in the "performance of duty" but rather as a volunteer acting in violation of federal law.

This leaves the furloughed worker completely exposed. Despite their good intentions—their desire to uphold the tradition of hard work and service—they may be denied FECA benefits because the shutdown legally severed their duty status.

### **B. The Excepted Worker and the Failure of Administration**

For the excepted employee, the coverage technically exists, but the administrative machinery required to process it often fails. Workers' compensation claims require administrative support: HR specialists to certify the claim, supervisors to review the accident report, and case managers to authorize medical treatment.

During a partial shutdown, the support staff in these HR departments are often designated as "non-essential" and furloughed. An excepted Border Patrol agent who breaks their leg chasing a suspect may find that there is no one at the agency to process their FECA claim (Form CA-1).

The delay in processing mirrors the delay in pay. The injured worker is left to navigate the complex federal medical bureaucracy alone, often while being denied the "Continuation of Pay" (COP) benefits they are statutorily entitled to because the agency has no funds to disperse.

## **V. THE WAGE-LOSS ANOMALY: HOW \$0 PAYCHECKS THREATEN FUTURE BENEFITS**

The most technical, yet devastating, impact of a shutdown on workers' compensation is the calculation of wage-loss benefits. Under FECA, disability compensation is calculated based on the employee's **Average Weekly Wage (AWW)** at the time of the injury.<sup>11</sup>

### **A. The "Zero Pay" Problem**

Workers' compensation relies on mathematics. To determine a worker's benefit rate, the Department of Labor looks at the worker's earnings over the year preceding the injury. A forty-three-day shutdown creates a significant statistical anomaly: a period of six weeks where the employee's income is effectively \$0.

If a worker is injured during the shutdown, or immediately after, a strict application of the AWW formula could include these weeks of zero earnings. This would artificially depress the "average" wage, resulting in a lower disability payment. Since FECA benefits can last for the duration of a life-long disability, a temporary government failure could permanently reduce the financial support available to a disabled veteran of the civil service.

### **B. The Limits of the "Fair Treatment Act"**

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<sup>11</sup> 5 U.S.C. § 8114.

In 2019, Congress passed the *Government Employee Fair Treatment Act* (GEFTA).<sup>12</sup> This law guarantees that all federal employees will receive retroactive pay once the government reopens. While this serves as a remedy for the *salary* lost, it is an imperfect fix for workers' compensation calculations.

Retroactive pay is often issued as a lump sum. Unless FECA regulations are specifically amended to attribute this lump sum back to the specific weeks of the shutdown, the "weeks of zero pay" may still appear on the payroll record used to calculate the AWW. There is currently no federal statute that explicitly mandates how the DOL should treat shutdown periods in AWW calculations. This leaves the injured worker reliant on administrative benevolence rather than statutory guarantee.

## **VI. THE HUMAN TOLL: MENTAL INJURY AND THE "RABBIT HOLE" OF POVERTY**

Workers' compensation law has slowly evolved to recognize "mental-mental" injuries—psychological conditions resulting from workplace stress. The 2025 shutdown created a perfect storm for these claims, testing the limits of what constitutes a "workplace hazard."

### **A. The Stress of Involuntary Servitude**

Legal scholars and unions have attempted to argue that forcing excepted employees to work without pay violates the 13th Amendment's prohibition on involuntary servitude. However, courts have consistently rejected this argument. In cases such as *Martin v. United States* and

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<sup>12</sup> *Government Employee Fair Treatment Act of 2019*, Pub. L. No. 116-1, 133 Stat. 3 (codified at 31 U.S.C. § 1341 note).

*Avalos v. United States*, the courts have held that because federal employees technically retain the right to quit, they are not being "enslaved."<sup>13</sup>

This legal reasoning, however, ignores the economic reality described by workers during the 2025 crisis. As noted in the introduction, the "right to quit" is an illusion for a family living paycheck to paycheck. Quitting a federal job means forfeiting tenure, a pension, and health insurance. The choice is not between freedom and servitude; it is between servitude and poverty.

### **B. The "Rabbit Hole" as a Compensable Injury**

The "rabbit hole" of financial ruin is a direct result of the conditions of employment imposed by the government. When the government forces an Air Traffic Controller to guide planes while terrified of eviction, or a TSA agent to screen passengers while hungry, the government is creating a hazardous work environment.

Under traditional workers' compensation principles, stress caused by "administrative actions" (like pay disputes) is often not compensable. However, the shutdown is not a routine administrative dispute; it is a systemic failure of the employer to meet its basic contractual obligation. This paper argues that FECA must be interpreted to recognize that **financial duress caused by the employer's illegal failure to pay** is a compensable workplace condition. If the stress of the shutdown causes an expected worker to suffer a nervous breakdown or a cardiac event, that injury arises directly out of the "performance of duty" under extraordinary duress.

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<sup>13</sup> *Martin v. United States*, 130 Fed. Cl. 578 (2017); *Avalos v. United States*, 54 F.4th 1343 (Fed. Cir. 2022).

The courts have already opened the door to this logic. In *Martin*, the Court of Federal Claims ruled that the government is liable for Liquidated Damages under the Fair Labor Standards Act (FLSA) when it fails to pay workers on their regularly scheduled payday.<sup>14</sup> If the government is a "lawbreaker" regarding pay, it cannot claim immunity regarding the health consequences of that lawbreaking.

## VII. THE NEED FOR A "RULER BOOK": PROPOSED STATUTORY REFORMS

The current system relies on ad-hoc solutions and retroactive fixes. As the January 30, 2026 deadline approaches, it is clear that reliance on congressional last-minute deals is not a strategy. The federal workforce needs a "ruler book"—a codified set of guidelines that activates automatically during a lapse in appropriations.

To honor the tradition of hard work and protect the integrity of the civil service, Congress must amend FECA to include a **Shutdown Protocol**. This amendment should include three specific provisions:

**1. Codification of "Excepted" Coverage:** The statute must explicitly state that any injury sustained by an excepted employee during a lapse in appropriations is deemed to be in the performance of duty, regardless of whether administrative support staff are available to process the claim immediately. It should mandate the creation of an emergency claims processing channel funded by the Employees' Compensation Fund, which does not lapse.

**2. Protection of Wage Calculations:** The statute must mandate that any period of lapsed appropriations shall be excluded from the Average Weekly Wage (AWW) calculation, or that

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<sup>14</sup> *Id.*

retroactive pay shall be legally deemed to have been paid on the regularly scheduled payday for the purposes of benefit calculation. This prevents the government's failure from permanently devaluing a worker's disability benefit.

**3. Recognition of Financial Duress:** The statute should acknowledge that for excepted workers, the condition of working without pay is a "hazardous condition of employment." This would shift the burden of proof, making it easier for workers to claim compensation for stress-related injuries (cardiac, stroke, mental health) occurring during a shutdown.

## VIII. CONCLUSION

America prides itself on its origin and tradition, deeply rooted in the belief that hard work pays off. But in late 2025, for millions of federal workers, hard work went unnoticed and unpaid. The government shutdown is no longer a rare anomaly; it is a recurring feature of modern governance.

When the government shuts down, even for one day, it sends a message that the social contract is void. It forces dedicated public servants into a rabbit hole of financial insecurity that threatens their livelihoods and their health. The current workers' compensation framework, designed for a functioning state, buckles under the weight of this dysfunction.

As we face the January 30 deadline, we must look beyond the immediate political resolution and address the structural vulnerability of the workforce. By implementing a federal mandated statute that safeguards workers' compensation rights during a shutdown, we can ensure that even when the government stops working, the safety net for its workers does not. We cannot prevent the political battles of the future, but we can ensure that the soldiers of the civil service do not become casualties of the war.