

DO NOT CONTACT THE COURT OR YOUR AGENCY ABOUT THIS NOTICE

**NOTICE OF LAWSUIT AGAINST UNITED STATES  
(agencies other than Homeland Security for which excepted employees are not identified)**

**1. INTRODUCTION**

Federal employees who were declared “excepted” employees (sometimes referred to in the media as “essential” employees) during the partial government shutdown in October 2013 have sued the United States in the United States Court of Federal Claims. They contend that the Fair Labor Standards Act (“FLSA”) required the Government to pay them and other excepted employees a minimum wage and overtime compensation on their regularly scheduled paydays for work performed during the shutdown. They claim that the Government violated the FLSA by not paying many FLSA non-exempt employees minimum or overtime wages for work performed October 1-5, 2013 on their regularly scheduled paydays.

You were sent this Notice because the parties believe that you may meet all five conditions to participate in this lawsuit. You are eligible if, between October 1 and October 5, 2013:

- a. you were a federal employee; and
- b. you were classified as “non-exempt” under the FLSA; and
- c. you were deemed an “excepted” employee;<sup>1</sup> and
- d. you worked for any amount of time between October 1 and October 5, 2013; and
- e. you were not paid for work performed October 1-5, 2013 on your regularly scheduled payday.

However, if you are disqualified under one of these conditions, then you are not eligible to participate.

This notice informs you how your rights under the FLSA may be affected by this lawsuit and of the procedure for participating in this lawsuit, if you are eligible to participate and choose to do so.

**2. THE COURT’S DECISION ON THE GOVERNMENT’S MOTION TO DISMISS**

The Court issued a decision on July 31, 2014 that addresses several of the issues in this case. In summary, the Court concluded:

- The Government violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid the minimum wage for all hours worked during the week of September 29, 2013 through October 5, 2013 on

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<sup>1</sup> If you were required to come into the office on October 1, 2013, only to assist in the orderly shutdown of your office, you are not eligible to participate in the lawsuit because you were not an “excepted” employee.

their regularly scheduled paydays. The minimum wage is \$7.25 per hour. [For example, a violation occurred if an employee worked 40 hours that week and received less than \$290 (\$7.25 x 40 hours) on the scheduled payday for the work performed during the week. Any money paid for work performed on Sunday, September 29, or Monday, September 30, would count toward the \$290, but any money paid for work performed during the previous week (September 22-28, 2013) would not count toward the \$290 even though it was paid in the same paycheck];

- The Government also violated the FLSA for excepted employees who were classified as non-exempt under the FLSA and were not paid for overtime worked during the week of September 29, 2013 through October 5, 2013 on their regularly scheduled paydays; and
- The Government did not violate the FLSA as to excepted employees who were classified as exempt under the FLSA.

The Court has not yet ruled on whether the Government is liable to pay excepted employees “liquidated damages” over and above their regular pay. If awarded, liquidated damages double the amount of minimum wages and overtime wages that should have been paid for work performed during the week of September 29, 2013 through October 5, 2013. Under the FLSA, an employer that violates the FLSA is liable for liquidated damages unless the employer proves that it acted in good faith and had reasonable grounds for believing that its act or omission was not a violation of the FLSA.

If you wish to download or print a copy of the decision, you may visit [www.shutdownlawsuit.com](http://www.shutdownlawsuit.com), the website that Plaintiffs’ lawyers have created concerning the litigation, and click on the “significant filings & orders” page. You can find other documents that have been filed in the case on that page as well. Neither the Court nor the Government has reviewed or endorses the accuracy of any of the information on that website.

### **3. PLAINTIFFS’ LAWYERS**

Plaintiffs’ lawyers in this case are:

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Mehri & Skalet, PLLC  
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#### **4. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

Your rights and participation in any recovery will depend on the decision described in Section 2 above and upon future rulings by the Court. In addition, if the Government paid you more than the minimum wage on your regularly scheduled payday for work performed during the week of September 29-October 5, 2013, and if you did not work overtime that week, you may not be entitled to any recovery.

#### **5. EFFECT OF JOINING THIS LAWSUIT**

If you join the lawsuit, you will be bound by the judgment, whether it is favorable or unfavorable. You will also be bound by, and will share in, any settlement that may be reached on behalf of the employees who have joined this lawsuit.

By joining this lawsuit, you designate the representative plaintiffs, Donald Martin, Jr., Patricia A. Manbeck, Jeff Roberts, and Randall L. Sumner, as your agents to make decisions on your behalf concerning the lawsuit by majority vote. These decisions will bind you if you join this lawsuit.

You also will be subject to a contingency fee agreement with plaintiffs' lawyers. Under that agreement if there is no recovery you will not have to pay any attorneys' fees or costs. If there is a recovery, plaintiffs' lawyers are entitled to reimbursement of all costs reasonably incurred in the litigation and to fees equal to 20% of the recovery. A copy of the fee agreement entered by plaintiffs' lawyers and the representative plaintiffs is available at the website, [www.shutdownlawsuit.com](http://www.shutdownlawsuit.com), maintained by plaintiffs' lawyers. If you join the lawsuit, plaintiffs' lawyers will represent you in this lawsuit. You may communicate with them, provide input, and receive advice from them about this lawsuit. You may also seek advice from another lawyer if you choose to retain one in addition to plaintiffs' lawyers, but you will be required to pay your lawyer yourself in addition to plaintiffs' lawyers.

#### **6. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT**

If you choose not to join this lawsuit, you will not be affected by any judgment or settlement in this case, whether favorable or unfavorable. You will not be entitled to share in any monetary recovery in this case. You will retain the right to pursue these claims on your own behalf with a lawyer of your choosing at your expense. Claims under the FLSA must be brought within two years of when the claim accrues, unless the Government's violation of the FLSA is found to be "willful," in which case your claim could be brought up to three years after the date when it accrued. The pendency of this lawsuit will not extend the time to file your claims.

## **7. HOW TO PARTICIPATE IN THIS LAWSUIT**

To join the litigation, go to the “Join the Case” page of [www.shutdownlawsuit.com](http://www.shutdownlawsuit.com). It describes how to fill out the “Consent to Join” form online and sign it electronically. Due to the large number of persons eligible to participate, it is essential that these forms be completed and submitted online if at all possible. If you are truly unable to fill out the “Consent to Join” form online, you should follow the directions on the “Join the Case” page for further instructions.

Your signed consent form must be returned to plaintiffs’ lawyers on or before 11:59 p.m. on **[insert in bold date from court order.]** If your signed consent form is not returned by then, you will be treated as someone who has not joined the lawsuit and you will not participate in any recovery obtained against the United States in this lawsuit.

If you have questions about filling out or sending the “Consent to Join” form, you may contact plaintiffs’ lawyers identified in section 3 above or you may consult your own lawyer at your own expense.

## **8. NO RETALIATION PERMITTED**

The Government may not discharge or otherwise discriminate or retaliate against you because you decide to take part in this case or to exercise your rights under the FLSA.

## **9. FURTHER INFORMATION**

Further information about this notice or the lawsuit may be obtained from plaintiffs’ lawyers at the email address, mailing address, telephone number or facsimile number set out in section 3 above or by consulting [www.shutdownlawsuit.com](http://www.shutdownlawsuit.com). Please do not contact the Court or your agency with questions or requests for information.

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES COURT OF FEDERAL CLAIMS.**

**EXCEPT IN THE DECISION DESCRIBED IN SECTION 2 ABOVE, THE COURT HAS TAKEN NO POSITION REGARDING THE MERITS OF PLAINTIFFS’ CLAIMS OR DEFENDANT’S DEFENSES.**

**NEITHER THE COURT NOR THE GOVERNMENT HAS REVIEWED OR ENDORSES THE ACCURACY OF ANY OF THE INFORMATION ON THE WEBSITE MAINTAINED BY PLAINTIFFS’ LAWYERS, WWW.SHUTDOWNLAWSUIT.COM.**