



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

**John Gage**  
National President

**J. David Cox, Sr.**  
National Secretary-Treasurer

**Augusta Y. Thomas**  
National Vice President for  
Women and Fair Practices

7/288812

March 28, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General,

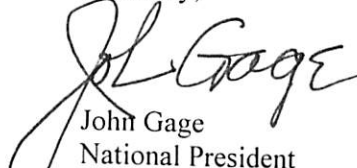
The specter of a person being compelled to work without pay, under threat of legal sanctions, should have ended in this country over a century and a half ago. And yet, the federal government is poised to demand that tens of thousands of federal workers report for duty without compensation or be fired for not showing up. If there is a government shutdown, that is what will happen to "essential" employees, although the government still refuses to provide any details.

There are serious legal implications in ordering federal employees to work, *possibly indefinitely*, without pay or even a legally binding promise that they will be paid in the future. In particular, and regardless of any exceptions that may purportedly exist under the federal Anti-deficiency Act, the fact remains that no federal agency has the power to obligate funds that Congress has not appropriated. U.S. Const. art. I, § 9, cl. 7. Congress is also under no requirement to appropriate funds in any particular way in the future, by, for example, providing for payment to individuals who may have worked during a funding lapse. So, even if it were true that an agency did not violate the Anti-deficiency Act, a statute subordinate to the Constitution, by incurring an obligation to pay an employee in the absence of appropriated funds, the actual payment of that obligation might occur only at the mercy of Congress.

Dedicated federal employees will come to work because of their commitment to the people they serve, but they should not be forced to do so under threat of termination and with no compensation. I urge you to work with AFGE, and the Office of Management and Budget, to craft a plan that avoids the harsh result of federal employees being forced to work without pay or be fired if they are not willing to do so.

The Thirteenth Amendment to the United States Constitution outlawed involuntary servitude in 1865 by mandating that "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Yet in 2011 the same government that is charged with defending the Constitution appears to be preparing to order vast numbers of civilian employees, who have committed no crime, to work without pay under the threat government initiated administrative discipline. This is frankly outrageous, and we fail to see how such a sweeping order survives constitutional scrutiny.

Sincerely,

  
John Gage  
National President