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Administrative Claims for Sunday Premium Pay as a Result of Decision in Fathauer V. United States

A Mandatory Reference for
ADS Chapter 472

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The U.S. Office of Personnel Management (OPM) has provided guidance to assist agencies in processing employees' administrative claims for Sunday premium pay as a result of the decision in *Fathauer v. United States*. In a May 26, 2009 decision, the United States Court of Appeals for the Federal Circuit ruled that part-time employees are entitled to Sunday premium pay for work performed on Sundays.

Based on its decision, agencies are required to pay part-time employees Sunday premium pay when such employees meet the requirements for entitlement to such payments pursuant to 5 U.S.C. 5546(a). Agencies should immediately begin to pay Sunday premium pay to all eligible part-time employees effective as of May 26, 2009. OPM is in the process of amending its regulations in 5 CFR 550.171 consistent with the *Fathauer* decision.

In anticipation of additional claims for Sunday premium pay that may be filed following the *Fathauer* decision, OPM has advised agencies to inform employees of the holding under the *Fathauer* decision to give notice to potential claimants. Employees should be aware that a pay claim against the Government must be received within six years after the claim accrues (see 31 USC 3706(b)). As a result, agencies should go back six years from the date the claim was filed and pay claims for any unpaid Sunday premium pay owed part-time employees for Sundays worked during that period.

As in all pay claims, the burden of proof is on the employee. In this instance, the employee's burden is to establish that he or she: (1) worked part-time; (2) worked on a Sunday during the claims period; and (3) did not receive an appropriate amount of premium pay. The employee must provide documentation showing when the Sunday work was performed.

Such documentation includes, but is not limited to, the employee's orders, certification of attendance, time and attendance records, or other documentation, such as employee affidavits or supervisory records, which indicate that he or she engaged in part-time Sunday work during the applicable claims period mentioned above.

Part-time employees should specify the dates they performed Sunday work without receiving Sunday premium pay and should provide evidence that, in fact, they were not paid Sunday premium pay for those Sundays. All claims must be made in writing and submitted to the Payroll Division (M/CFO/P), to the attention of Angela Burkard, Chief, 7.07-132, at (202) 712-0225. The M/CFO/P staff will evaluate any relevant evidence provided by the claimant or in their possession to see if it supports the claim. Supervisors and timekeepers may have relevant information in their own records that would negate the need for the employee to submit documents in support of his or her claim.

Employees who have retired or separated may file a claim with the Agency and must receive a lump-sum payment for any Sunday premium pay found to be unpaid as a result of that claim. Claims may also be accepted from representatives of current employees and of deceased employees or employees who are otherwise not able to

submit claims on their own behalf. Further guidance on Sunday premium pay may be found at <http://www.opm.gov/oca/WORKSCH/HTML/sunday.htm>.

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