

  
Approved for Release  
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Date

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**DEPARTMENT OF COMMERCE  
OFFICE OF HUMAN RESOURCES MANAGEMENT**

**HUMAN RESOURCES (HR) BULLETIN #115, FY10**

**SUBJECT:** Administrative Claims for Sunday Premium Pay

**EFFECTIVE DATE:** Upon release of this HR Bulletin

**EXPIRATION DATE:** Effective until canceled or superseded

**BACKGROUND:** 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, under Title 5, United States Code (U.S.C.) § 5546(a).

**PURPOSE:** The purpose of this Bulletin is to notify operating units that they are required to pay part-time employees Sunday premium pay, as a result of the decision in *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009), when such employees meet the requirements for entitlement to such payments pursuant to Title 5, U.S.C. § 5546(a).

**CHANGES:** Based on the *Fathauer* decision, part-time employees are entitled to Sunday premium pay under Title 5, U.S.C. § 5546(a) and accompanying regulations; see Title 5, Code of Federal Regulations (CFR) §§ 550.171 and 550.172.<sup>1</sup> The U.S. Office of Personnel Management (OPM) has also determined that operating units are required to pay part-time prevailing rate systems employees Sunday premium pay when such employees meet the requirements for entitlement to such payments, pursuant to Title 5, U.S.C. § 5544(a) and Title 5, CFR § 532.509.<sup>2</sup> Operating units should immediately begin to pay Sunday premium pay to all eligible part-time employees, effective as of May 26, 2009.

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<sup>1</sup> OPM will amend this regulation, consistent with the *Fathauer* decision. All regulatory provisions relevant to the administration of Sunday premium pay apply for both full-time and part-time employees.

<sup>2</sup> Although 5 CFR § 532.509 does not specifically limit entitlement to Sunday premium pay to full-time prevailing rate employees only, a limitation to full-time prevailing rate employees is contained in the Federal Wage System Appropriated Fund and Nonappropriated Fund Operating Manuals at subchapters S8-4e(3). Agencies are instructed to disregard this limitation.

**PROCEDURES:** OPM is advising agencies to inform employees of the holding under the *Fathauer* decision in order to give notice to potential claimants. Operating units 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.<sup>3</sup>

Appropriate interest on back pay under Title 5, U.S.C. § 5596(b)(2) may be calculated using the tools found at <http://www.opm.gov/oca/pay/backpay/backpay.asp>.

**COVERAGE:** All current full-time and part-time employees who perform Sunday work are eligible to make a claim. In addition, employees who have retired or separated may file a claim with their former employing Servicing Human Resources Office (SHRO) 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 and incompetent employees.

**DOCUMENTATION:** For all pay claims, the burden of proof is on the employee. Specifically, an employee needs to establish that he or she:

- Worked part-time;
- Worked on a Sunday during the claims period; and
- Did not receive an appropriate amount of premium pay.

Employees should provide documentation showing when the Sunday work was performed, which includes but is not limited to:

- Employee's orders;
- Certification of attendance;
- Time and attendance records;
- Employee affidavits;
- Supervisory records;
- Other documentation.

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 should be made in writing and SHROs should evaluate any relevant evidence provided by the claimant or in their possession to see if it supports the claim. SHROs may have relevant information in their own records that would negate the need for the employees to submit documents in support of his or her claim.

**PROCESSING:** At this time, claims will have to be processed manually, including retroactive claims. The National Finance Center (NFC) is making the necessary system modifications that allow for future payments to current part-time employees who are eligible and entitled to receive

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<sup>3</sup> Under the Barring Act of 1940, a pay claim against the Government must be received by the agency that conducts the activity from which the claim arises within six years after the claim accrues. See Title 31, U.S.C. § 3702(b).

Sunday premium pay, but NFC is unable to provide a timetable as to when the system changes will be complete. In the meantime, NFC asks that any Sunday premium pay requests be entered via the Special Payment Processing System (SPPS), and provide the following information in the request:

- Why the request is being submitted via SPPS (“Interim guidance from NFC is to use SPPS to pay until NFC system changes are made (project#00145)”);
- Indicate that this request is for Sunday premium pay only;
- Indicate which pay periods are being covered by the request;
- Indicate date(s) and number of Sunday hours worked;
- Indicate the employee’s hourly rate at the time the hours were worked as well as the Sunday premium hourly rate (i.e., 25% of the hourly rate); and
- Indicate the accounting string if possible.

Here is a narrative example provided by NFC. (Please note that SPPS has limited space for text entries, so keep the request brief.)

PT emp. now eligible for Sunday premium pay (TC 04) per recent court decision awaiting final guidance from OPM. Interim guidance from NFC is to use SPPS to pay until NFC system changes are made (project#00145). T&As have been paid for regular hrs only (TC 01). Please process for Sunday premium pay ONLY. This request covers PP09, PP10, and PP11 of 2009. Emp. worked the following Sunday hours: 04/26/09: 4 hrs; 05/03/09: 6 hrs; 05/17/09: 2 hrs; 05/24/09: 7 hrs. Employee’s hourly rate during this period is \$XX.XX. Sunday premium is 25% of hourly rate or \$X.XX ph.  
[Accounting String]

This Bulletin will be updated once NFC has made the necessary modifications to process Sunday premium pay.

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

**REFERENCES:** 5 U.S.C. 5546(a); 5 U.S.C. 5544(a); 5 U.S.C. 5596(b)(2); 5 U.S.C. 3702(b); 5 CFR 532.509; *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009)

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