



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Workforce Management Office  
OFA4, SSMC4  
1305 East West Highway  
Silver Spring, MD 20910

March 25, 2010

MEMORANDUM FOR: All Rating Officials

FROM: Joseph T. Abbott  
Deputy Director, Workforce Management

SUBJECT: Administrative Claims for Sunday Premium Pay for Part-Time Employees as a Result of the Decision in *Fathauer v. United States*

This memo is for rating officials who have employees that are part-time or may have been part-time within the past 6 years. 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 regularly scheduled work performed on Sundays under 5 U.S.C. 5546(a). As a result of this court case, agencies are required to pay part-time employees Sunday premium pay when such employees meet the requirements for entitlement to such payment pursuant to 5 U.S.C. 5546(a). If you currently have any part-time employees or if you had part-time employees who have moved to full-time, retired or separated who were regularly scheduled to work on Sundays, I am asking that you provide the following information to those employees.

Part-time employees who are regularly scheduled to work on Sundays are entitled to Sunday premium pay as a result of the decision in *Fathauer v. United States*. On Tuesday, March 9, Timekeepers were notified to submit corrected Time and Attendance records for part-time employees who were regularly scheduled to work on Sundays for the period May 26, 2009 (pay period 11) to February 27, 2010 (pay period 4). Beginning February 28, 2010 (pay period 5), timekeepers were able to record Sunday premium pay for part-time employees in the webTA system. Some National Weather Service part-time employees already received payment for the period back to May 26, 2009 through manual payments processed by the servicing Workforce Management Office (WFMO). In those situations, timekeepers were instructed not to submit corrected T&A records otherwise, employees would be overpaid.

In addition to paying part-time employees for regularly scheduled work performed on a Sunday from May 26, 2009 to present, employees may file a claim for backpay within 6 years after the claim accrues for the period prior to May 26, 2009, when they performed regularly scheduled Sunday work without receiving Sunday premium pay. 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 claim period, and
3. Did not receive an appropriate amount of premium pay.

The employee should provide documentation to the agency showing when the Sunday work was performed. Such documentation includes, but is not limited to:

- Work schedules
- Certification of attendance
- Time and attendance records,
- Other documentation, such as employee affidavits or supervisory records, which indicated that the employee was engaged in regularly scheduled part-time Sunday work during the claim period.

Employees who have retired or separated may file a claim with their former employing agency and must receive a lump-sum payment for any Sunday premium pay found to be unpaid because of that claim. Claims may also be accepted from representatives of current employees and of deceased or incompetent employees.

All claims should be made in writing to your [servicing WFMO](#). Questions should be directed to your [servicing WFMO](#).