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12/08/2009
CPM 2009-21



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

From: John Berry
Director

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

This memorandum provides U.S. Office of Personnel Management (OPM) guidance to assist agencies in processing employees' administrative claims for Sunday premium pay as a result of the decision in *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009). 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 5 U.S.C. 5546(a). This memorandum serves as notification that 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). This memorandum also includes guidance to assist agencies in processing employees' administrative claims for Sunday premium pay as a result of this decision.

Based on the *Fathauer* decision, part-time employees are entitled to Sunday premium pay under 5 U.S.C. 5546(a) and accompanying regulations. See 5 CFR 550.171, 550.172.¹ Based on the Federal Circuit's reasoning in the *Fathauer* case, OPM has also determined that agencies 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 5 U.S.C. 5544(a) and 5 CFR 532.509.² Agencies should immediately begin to pay Sunday premium pay to all eligible part-time employees effective as of May 26, 2009.

In anticipation of additional claims for Sunday premium pay which may be filed following the *Fathauer* decision, we are advising agencies to inform employees of the holding under the *Fathauer* decision in order to give notice to potential claimants. Agencies may use OPM's memorandum to