

SETTLEMENT AGREEMENT

The National VA Council-American Federation of Government Employees ("AFGE" or "the Union") and the Department of Veterans Affairs, ("Agency" or "VA"), hereby agree to settle all disputes arising out of AFGE's National Grievance 04/09/2010 entitled "Improperly denying and failing to reimburse part-time employees eligible for Sunday premium pay as ordered by the Federal Circuit Court in Fathauer v. United States, 566 F.3d 1352 (Fed. Cir. 2009) and OPM guidance OPM 2009-2 ("National Grievance"), in accordance with the following terms and conditions.

I. Withdrawal of Grievance

By execution of this settlement agreement (hereafter "Agreement" or "Settlement Agreement"), AFGE voluntarily withdraws the National Grievance and waives any and all actions, claims, complaints, grievances, appeals or proceedings of whatever nature arising from the allegations contained in the National Grievance, with the exception of any grievances that may arise by reason of breach of any term of this Settlement Agreement. AFGE agrees to promptly provide any document or take other action necessary to effectuate the withdrawal or dismissal of the National Grievance.

II. Terms of Settlement

By execution of this Agreement, AFGE and VA (collectively the "parties") have agreed to the following:

- A. The VA agrees to accept written claims for unpaid Sunday premium pay retroactive 6 years from the date of the filing of the National Grievance on April 9, 2010, unless a written claim was previously filed from this date.
- B. All claims must be processed as soon as possible. If claims are not processed within 90 days of receipt of a written claim, HR offices must issue claimants an interim response with an expected date or timeframe of payment or final decision. HR and payroll offices must maintain a record of the actions taken on all claims received, whether paid or unpaid.
- C. The Agency will follow the notice requirements as outlined in Section 3B of the HRML. Upon receipt of returned mail to the Agency for lack of forwarding address, the Agency will notify the Union of the employees affected and the Union will provide, if available, any updated address information to the Agency so that it can make a second attempt at notice.

- D. In the event that an AFGE representative and/or bargaining unit employee has filed a written claim and an issue arises that cannot be resolved at the local level, the local HR office and/or the AFGE National or District Representative will utilize the regional contact information in the HRML to resolve process of the claim. (See Attachment B for the contact information).
- E. The Fathauer HRML recognizes that the automated identification process attempts to identify all potentially eligible part-time employees. The parties understand that in some instances, potentially eligible part-time employees may not have been identified due to coding errors or other unusual circumstances. Upon request, the VA will work with AFGE to address these concerns.

III. Stipulations

The parties further stipulate and agree that:


- A. The parties have entered into this Settlement Agreement freely and voluntarily.
- B. This Settlement Agreement does not constitute an admission of guilt, fault or wrongdoing by either party.
- C. The obligations of the parties specified above constitute consideration sufficient to render this Agreement enforceable by either party.
- D. This Settlement Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals or actions that may be filed.
- E. This Settlement Agreement constitutes the entire understanding between the parties regarding the resolution and settlement of the National Grievance, and there are no other terms or commitments, verbal or written, regarding the settlement of the National Grievance.
- F. The Agency or the Union may submit this Agreement as evidence of withdrawal of the National Grievance or as evidence of AFGE's waiver of any and all actions, claims, complaints, grievances, appeals or proceedings of whatever nature arising from the allegations contained in the National Grievance.
- G. Either party may bring a claim in the form of a grievance arising by reason of breach of any term of this Settlement Agreement.

H. This Settlement Agreement may not be modified except by a written agreement signed by the undersigned herein.



For the Union

Date: 8/17/2010



For the Agency

Date: 8/15/10

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-10-

Administrative Claims for Sunday Premium Pay as a Result of *Fathauer v. United States*

1. Purpose. This Human Resources Management Letter (HRML) provides information and instructions for identifying affected employees and processing administrative claims as a result of the *Fathauer v. United States* court decision. This HRML also include claim requirements for bargaining unit employees of the American Federation of Government Employees (AFGE).

2. Background

a. In Memorandum for Chief Human Capital Officers dated December 8, 2009, the Office of Personnel Management (OPM) informed agencies of the *Fathauer v. United States* court decision. (See OPM's memorandum at <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=2623>.) The memorandum provides that part-time Title 5 employees, including Federal Wage Systems (FWS), employees, are entitled to Sunday premium pay under 5 U.S.C. 5546(a) effective May 26, 2009, for regularly scheduled non-overtime work performed on Sundays. Agencies are required to inform employees of the *Fathauer* decision and to accept claims for unpaid Sunday premium pay retroactive 6 years from the date of a written claim. Claimants are entitled to appropriate interest payments under 5 U.S.C. 5596 for unpaid Sunday premium pay earned prior to May 26, 2009.

b. This HRML provides VA facilities with the process used to identify and inform employees of the *Fathauer* decision as well as the claims process for Sunday premium pay earned prior to May 26, 2009. Part-time employees covered by the *Fathauer* decision will receive Sunday premium pay for periods after May 26, 2009, without filling a claim **once changes are made to the payroll and Electronic Time and Attendance (ETA) systems**. The Office of Management will notify facilities when the payroll and ETA systems are modified and will provide instructions to payroll offices for processing Sunday premium pay earned after May 26, 2009. This HRML primarily addresses claims for Sunday premium pay earned prior to May 26, 2009.

3. Covered Employees

a. The *Fathauer* decision applies only to part-time Title 5 General Schedule and FWS employees with the exceptions noted in paragraph b below. It does not apply to Title 38

employees, such as nurses, physicians, physician assistants, and expanded function dental auxiliaries.

b. The Fathauer decision does not apply to part-time Title 38 hybrid employees or part-time Title 5 health care workers for periods in which they were entitled to weekend pay under 38 U.S.C. 7453(c). For example, part-time employees in First Generation Hybrid occupations began to automatically receive weekend pay under 38 U.S.C. 7453(c) effective January 27, 2002, and therefore would not have an entitlement under Fathauer. Part-time employees in Second Generation Hybrid occupations and part-time Title 5 health care workers may have limited entitlement to Sunday pay under Fathauer depending on the date of their written claim.

c. Since the Fathauer decision provides that employees may file claims for unpaid Sunday premium pay up to six years prior to the date of a written claim, the following shows the only periods for which part-time title 38 hybrid employees and Title 5 health care workers may be eligible for unpaid Sunday depending on the date of their written claims:

Category	Date Automatically Entitled to Weekend pay Under 38 USC 7453(c)	Possible Eligibility Period Under Fathauer	To qualify for Possible Eligibility Period, written claim must be dated within date range shown below
First Generation Hybrid	January 27, 2002 (PL 107-135)	No entitlement under Fathauer as the earliest possible date of eligibility would be May 26, 2003, i.e., six years prior to the decision date.	No entitlement under Fathauer.
Second Generation Hybrid	December 6, 2003 (PL 108-170)	May 26, 2003 – December 5, 2003	May 26, 2009 – December 5, 2009
Title 5 Health care workers	January 11, 2004 (PL 108-170)	May 26, 2003 – January 10, 2004	May 26, 2009 – January 10, 2010

d. Appendix A of HRML 05-06-06 dated August 8, 2006, contains the occupation codes for first and second generation hybrid employees. Appendix A of VA Handbook 5007 Part V contains the list of Title 5 health care occupations, including hybrids, eligible for weekend premium pay.

4. Automated Identification and Notification Process

- a. The Human Resources Information Service (HRIS) will assist in identifying potentially eligible part-time employees by querying PAID. HRIS will generate a notification letter and claim form (see Attachments A and B) for current and former employees who were *coded as part-time in any pay period from May 26, 2003 to May 26, 2009*. Employees who were in first generation hybrid occupations for the entire period will not receive a notification letter or claim form as they do not have an entitlement under the Fathauer decision as explained in paragraph 3. Employees in second generation hybrid occupations and title 5 health care workers will receive letters if they were coded as part-time in any pay period during their possible eligibility period as explained in paragraph 3. Employees in second generation hybrid occupations and title 5 health care workers will not receive letters if their part-time status were after their possible eligibility period. For example, if an employee became a part-time Title 5 health care worker on or after January 11, 2004, they will not receive a letter.
- b. Once identified, HRIS will bulk-mail notification letters and claim forms to each facility's human resources office who in turn will be responsible for delivery of the letters and for tracking all claims. HRIS will also place a listing on RSD containing the names and other relevant information of all employees for whom letters are generated. The RSD listing will be entitled "Fathauer Claimants."
- c. The human resources office must update letters with any new known addresses and, in the case of known deceased employees, with the names and addresses of known beneficiaries. Letters returned due to an incorrect address must be re-mailed whenever an updated address is provided by the U.S. Postal Service, or other creditable source. When letters are returned for former bargaining unit employees, the human resources office will contact the local union official in an attempt to obtain an updated address. The human resources office will serve as the point of contact for all claims and must maintain a record of all notification letters issued and all claims received.
- d. The automated identification process attempts to identify all potentially eligible part-time employees. Local human resources offices may issue notification letters and claim forms to any employee not identified in the automated process. In some instances, potentially eligible part-time employees were not identified due to coding errors or other unusual circumstances. Human resources offices will work with local union officials to address concerns regarding non-receipt of notification letters to specific bargaining unit employees.

5. Claims

- a. All claimants must submit a written claim in order to receive a payment of Sunday premium pay for work performed prior to May 26, 2009. The back pay claim period is six years prior to the date of a written claim through May 25, 2009.

b. For current and former AFGE bargaining unit members, April 10, 2010, will be considered the date of a claim unless the employee submitted a written claim dated earlier. For example, if an AFGE bargaining unit member submitted a written claim dated between May 26, 2009, and April 9, 2010, the earlier date should be used to compute the 6 year claim period. If the bargaining unit member did not submit an earlier dated written claim, April 10, 2010, will be used to compute the 6 year claim period. AFGE bargaining unit members who did not complete a written claim prior to April 10, 2010, must submit a claim letter (Attachment B) in order to initiate a claim with the April 10, 2010 date.

b. In addition to the claims submitted in the form of a claim letter (Attachment B), facilities must accept any other written claim submitted by an employee (claimant) dated on or after May 26, 2009, in order to establish the six year claim period. This may include an e-mail or other written correspondence from an employee to their supervisor, human resources office or other management official. To the extent that previously submitted written claims do not include the necessary information, all claimants must submit a claim letter (Attachment B).

6. Validation and Payment of Claims

a. All claims received as a result of the notification letters or other claims must be validated by the local payroll office by reviewing time and attendance information for the period claimed. Since potentially eligible claimants are being identified as indicated in paragraph 4, claimants are to provide the actual or approximate dates or periods in which they worked regularly scheduled non-overtime Sunday hours, the organization name, position title and any other information that supports a claim. Part-time employees who did not work any regularly scheduled non-overtime Sunday hours during the claim period do not have an entitlement to Sunday pay under the Fathauer decision.

b. Sunday premium pay is payable at 25% of the claimant's basic rate of pay for regularly scheduled non-overtime hours, any part of which was performed on Sunday. Local payroll offices must compute and pay any unpaid Sunday premium pay at the basic pay rate in effect during the eligible claim period. Once the amount due is computed, the local payroll office may process the Sunday premium pay adjustments through normal processing/coding procedures.

c. Eligible part-time employees will receive Sunday premium pay without filing a claim for periods of work performed after May 26, 2009, **once PAID and ETA are programmed to pay Sunday premium pay to part-time Title 5 and FWS employees.** Local payroll offices will receive additional information and instructions from the Office of Management once PAID and ETA programming is completed. At that time, local payroll offices will be instructed to process any Sunday premium pay adjustments for work performed after May 26, 2009. Local payroll offices may not enter manual pay adjustments or otherwise pay Sunday premium pay to employees covered by the *Fathauer* decision for work performed after May 26, 2009, until instructions are received from the Office of Management.

d. Local payroll offices must maintain a record of the actions taken on all claims received, whether paid or unpaid. Attachment C is a sample response letter that will be used to notify claimants of the actions taken on claims.

e. All claim forms, whether paid or unpaid, computation sheets and other supporting documentation must be maintained for 6 years after the payment issue date or claim denial date. Local human resources and payroll offices must be able to report the actions taken on all claims when requested by appropriate officials.

7. Interest Payments. Once Sunday premium payments are paid, the local payroll office must compute and issue backpay interest payments in accordance with 5 U.S.C. 5596 within 30 days. OPM provides a tool for computing backpay interest at <http://www.opm.gov/oca/pay/backpay/backpay.asp>

8. Questions. Questions concerning pay entitlement should be directed to the Compensation Specialist assigned to your geographic area <http://vaww1.va.gov/ohrm/Pay/ContactPay.htm>.

Tonya M. Deanes

Attachments

NOTIFICATION LETTER

[Insert Employee Name and Address]

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

Dear [Insert Employee Name];

On May 26, 2009, the United States Court of Appeals ruled that part-time employees are entitled to Sunday premium pay under Title 5 United States Code 5546(a). The decision, *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009) provides that part-time employees are eligible to receive Sunday premium pay for regularly scheduled non-overtime tours, any part of which that falls on a Sunday effective May 26, 2009. In addition, employees may claim Sunday premium pay for six years prior to the date of a written claim.

We have determined that you were employed as a part-time employee with the Department of Veterans Affairs at some point during the six years prior to May 26, 2009. If you worked a regularly scheduled non-overtime tour, any part of which was performed on Sunday, you may be entitled to unpaid Sunday premium pay plus interest. If you wish to submit a claim, you may complete the attached claim form and return it to the servicing human resources office at the address shown above. If you previously submitted a written claim, you may resubmit that claim along with the attached claim form in order to establish an earlier claim period. Payment of Sunday premium pay for work performed prior to May 26, 2009, will not be made unless you submit a written claim.

Current part-time employees who regularly work on a Sunday tour will automatically receive Sunday premium pay for any Sunday work performed after May 26, 2009, once VA's payroll and time and attendance systems are modified. Claims are not required for Sunday premium pay earned after May 26, 2009.

In order to process your claim promptly, please return the attached claim form to the servicing human resources office as soon as possible. Please allow 90 days from the date your claim is received before contacting the servicing human resources office on the status. If it is determined that you are not entitled to unpaid Sunday premium pay as a result of the *Fathauer* decision, you will be notified.

[Insert Servicing Human Resources Officer]

[Insert Servicing HR office's name and address]

CLAIM LETTER

TO: HR Officer

FROM:

I, _____, hereby claim unpaid Sunday premium pay plus interest as a result of the *Fathauer* decision for regularly scheduled non-overtime Sunday work performed as a part-time employee. I understand that this claim is for unpaid Sunday premium pay for work performed up to six years prior to the date of my written claim through May 26, 2009. I will automatically receive any Sunday premium pay for work performed as a part-time employee after May 26, 2009, once VA's payroll and time and attendance systems are reprogrammed.

The following information supports my claim for unpaid Sunday premium pay:

- Dates or Periods of Sunday work: _____
- Frequency of Sunday work: _____
- Average number of hours per Sunday tour: _____
- Position title at the time of Sunday Work: _____
- Name of VA facility and organization(s): _____
- Number of normal hours per pay period (must be less than 80): _____

Enter any additional information to support your claim. For example, if you worked for more than one organization or held more than one position during the six year period, enter the above information relative to each organization or/and position. As applicable, attach copies of any previously submitted claims for unpaid Sunday premium pay and other supporting documentation.

I certify that the above information is correct to the best of my knowledge.

Name of Employee _____

Signature of Employee (or Claimant)

_____ Date _____

If separated or if claimant is other than employee, enter name and mailing address:

SAMPLE RESPONSE LETTER

TO: [Insert employee/claimant name]

FROM: [Insert name and address of servicing human resources office]

This is in response to your recent claim for unpaid Sunday premium pay as a result of the *Fathauer v. United States* court decision.

_____ A review of your claim reveals that you are entitled to unpaid Sunday premium pay in the amount of \$_____ plus interest. If you are a current VA employee, this payment amount plus interest will be included as an adjustment in your regular biweekly pay check. If you are not a current VA employee, your payment will be sent to the address provided on your claim form.

_____ A review of your claim reveals that you are not entitled to unpaid Sunday premium pay under the Fathauer decision for the following reason(s)

If you have information that would support reconsideration of your claim, you may submit it to the servicing human resources office at the address above.

_____ Other (Explain)

[Insert Name of Servicing Human Resources Officer]

**Compensation Division
Geographic Assignments**

NOTE:

On August 18, 2005, we issued HRML No. 05-05-04, concerning Changes in Pay Administration Rules for General Schedule employees.

The Compensation Division has a new e-mail address for questions about these new pay-setting rules:

VA.PaySettingRules@VA.gov

After we receive the questions, one of the specialists listed below we will respond to your inquiry.

After we receive several similar questions, we intend to place FAQs on the OHRM Pay Administration Website.

<u>DEBRA DOTY</u> (757) 728-3381 Voice (757) 728-3389 Fax	<u>IRIS GRESHAM</u> (202) 461-7818 Voice (202) 273-7607 Fax
VISNs 1, 3, 4, 6, 7, 19	VISNs 2, 5, 8, 9, 10, 15, 18, and 20
VBA Southern Area	VBA Central Area Eastern Area
NCA MSNs	NCA MSN

Atlanta Area
Denver Area
Indianapolis Area

Philadelphia Area

STEPHANIE BOYD
(202) 461-7819 Voice
(202) 273-7607 Fax

[Position temporarily
vacant]
202.461.xxxx voice
202.273.xxxx FAX

VISNs
11, 12, 16, 17, 21, 22, 23,
and VACO

VISNs

VBA
Western Area

VBA

NCA MSN
Oakland Area

NCA MSNs