



\$48,661 Judgment Entered for Six NWSEO Members in Sunday Differential Pay Case

The United States Department of Justice has agreed to pay six NWS forecasters \$48,661 in lost pay and interest in settlement of a Federal court suit that established the right of part-time Federal employees to receive Sunday differential. This lawsuit was filed by NWSEO in 2007 on behalf of five NWSEO members who participate in “job-sharing” arrangements and who work less than a full-time schedule. A sixth NWSEO member later joined the lawsuit, styled *Fathauer et al v. United States*.

The Sunday premium pay statute states that “an employee” who performs work on Sunday is entitled to 25 percent Sunday differential. However, since the 1960s, OPM regulations have limited the payment of Sunday differential to only full-time Federal employees, even though the pay statute contains no limitation. NWSEO brought suit in the Court of Federal Claims arguing that OPM’s regulation conflicted with the law enacted as enacted by Congress. The Court of Federal Claims initially ruled against the NWS forecasters, but in May 2009 the United States Court of Appeals for the Federal Circuit overturned the lower court’s decision and held that all Federal employees are entitled to Sunday differential regardless of whether they are full-time or part-time employees. In December, 2009 John Berry, the Director of OPM, issued a directive to all Federal agencies to begin paying part-time employees Sunday differential as a result of NWSEO’s successful appeal.

After repeated delays in accurately computing their lost pay and interest, last week the Justice Department executed an agreement to pay the six plaintiffs in the *Fathauer* case, who work at WFOs in Fairbanks, Spokane, and Binghamton, NY and at the Islip CWSU, the differential they have earned while working Sundays during the past six years. Individual payments will range from \$1,252 to \$17,283.