

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Action Date:

For Information Only

DEPARTMENTAL PERSONNEL MANUAL

DPM BULLETIN NO. 550-32

DATE: SEP 27 1993

SUBJECT: Sunday Premium Pay for Periods of Paid
Leave and Excused Absence

The Office of Personnel Management (OPM) recently issued FPM Letter 550-79 (copy attached), providing guidance on implementing the decision of the United States Court of Appeals for the Federal Circuit in Armitage, et al. v. United States (Fed. Cir. No. 92-5157, April 12, 1993) with regard to the payment of Sunday Premium pay.

The Consolidated Uniform Payroll System has been modified to begin paying Sunday premium pay to employees on approved leave or excused absence during regular working hours falling on a Sunday. Additionally, work has begun to determine what actions will be necessary when OPM issues guidance about processing claims for Sunday premium pay for the period prior to the first day of the first pay period on or after May 27, 1993. Initial reviews indicate that very few operating administrations will be impacted by the Armitage decision.

If you have any questions, please call Jan Karicher of my staff on (202) 366-9450.



Director of Personnel

Attachment

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Federal Personnel Manual System

FPM Letter

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Chapter 550

RETAIN UNTIL SUPERSEDED

SUBJECT: Sunday Premium Pay for Periods of Paid
Leave and Excused Absence

Washington, DC 20415
August 20, 1993

Heads of Departments and Independent Establishments:

SUMMARY

1. The purpose of this letter is to provide guidance to agencies on implementing the decision of the United States Court of Appeals for the Federal Circuit in Armitage, et al. v. United States (Fed. Cir. No. 92-5157, April 12, 1993) with regard to the payment of Sunday premium pay.

BACKGROUND

2. In the Armitage decision, the United States Court of Appeals for the Federal Circuit has affirmed the decision of the United States Claims Court on June 20, 1991, that the "leave with pay" statutes of title 5, United States Code, preclude any reduction in pay for employees who take annual or sick leave when they are regularly scheduled to work on Sundays. The court determined that such employees are entitled to Sunday premium pay for periods of authorized absence from work on paid leave. The court has made this determination despite the fact that 5 U.S.C. 5544 and 5 U.S.C. 5546(a) provide that an employee must perform regularly-scheduled work on Sunday in order to be entitled to Sunday premium pay.

3. The U.S. Solicitor General decided not to request a rehearing of the Armitage decision before the U.S. Court of Appeals or to appeal the decision to the U.S. Supreme Court. The decision on the merits of the case became final on May 27, 1993.

4. Under 5 U.S.C. 5546(a) and 5 CFR 550.171 for an "employee" as defined in 5 U.S.C. 5541, and under 5 U.S.C. 5544(a) and 5 CFR 532.509 for prevailing rate employees paid from appropriated funds, a full-time employee is entitled to pay at his or her rate of basic pay, plus premium pay at a rate equal to 25 percent of

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his or her rate of basic pay, for each hour of Sunday work which is not overtime work and which is not in excess of 8 hours for each regularly scheduled tour of duty that begins or ends on Sunday. Under 5 CFR 610.102(g), "regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with 5 CFR 610.111. Also, under 5 CFR 610.111(b), all work performed by an employee on a "first 40-hour tour of duty" within the first 40 hours during the administrative workweek is considered to be "regularly scheduled." Part-time employees and employees who work intermittently are not entitled to premium pay for Sunday work.

IMPLEMENTATION

5. The Office of Personnel Management has determined that while the Armitage decision specifically addresses annual leave under 5 U.S.C. 6303 and sick leave under 5 U.S.C. 6307, agencies must also pay Sunday premium pay to full-time employees when other types of paid leave are approved and taken in lieu of regularly scheduled nonovertime work on Sundays. This includes home leave and shore leave under 5 U.S.C. 6305, leave for jury or witness service under 5 U.S.C. 6322, military leave under 5 U.S.C. 6323, funeral leave under 5 U.S.C. 6326, and excused absences approved by agencies consistent with subchapter 11 of FPM Chapter 630.
6. Effective on the first day of the first pay period beginning on or after May 27, 1993, agencies must pay Sunday premium pay required by 5 U.S.C. 5546(a) or 5 U.S.C. 5544 (for up to 8 hours in any tour of duty, excluding overtime hours) to a full-time employee as defined in 5 U.S.C. 6301 who is regularly scheduled to work on Sunday, but who receives basic pay for a period of paid leave or excused absence during that tour of duty. This change in policy does not apply to nonappropriated fund employees of the Department of Defense or the U.S. Coast Guard.
7. OPM will provide information about processing claims for Sunday premium pay for periods prior to the first day of the first pay period beginning on or after May 27, 1993, at a later date.
8. An employee is not entitled to Sunday premium pay and is not otherwise affected by the Armitage decision when the employee does not take paid leave on a Sunday because the employee is in a nonpay status, is excused from a requirement to perform overtime work, performs no work on a holiday, takes compensatory time off, or uses credit hours under a flexible work schedule.



Patricia W. Lattimore
Acting Deputy Director