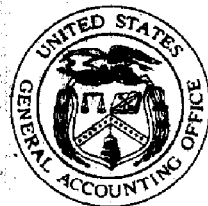


May 1995

SUNDAY PREMIUM PAY

Millions of Dollars in
Sunday Premium Pay
Are Paid to Employees
on Leave





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-260238

May 19, 1995

The Honorable Jim Lightfoot
Chairman
The Honorable Steny H. Hoyer
Ranking Minority Member
Subcommittee on Treasury, Postal Service,
and General Government
Committee on Appropriations
House of Representatives

The Honorable Richard C. Shelby
Chairman
The Honorable J. Robert Kerrey
Ranking Minority Member
Subcommittee on Treasury, Postal Service,
and General Government
Committee on Appropriations
United States Senate

This report responds to the direction in the conference report accompanying the Treasury, Postal Service, and General Government Appropriations Act of 1995 that we examine and report on the payment of premium pay to employees on sick leave.¹ The objectives of our review were to determine (1) the agencies that pay the most Sunday premium pay and the amounts paid; (2) to the extent possible, the amounts of Sunday premium pay paid to employees on leave at selected agencies; and (3) whether employees' Sunday leave usage at these agencies increased after issuance of the Office of Personnel Management (OPM) letter stating that agencies must pay Sunday premium pay to full-time employees who are regularly scheduled to work on a Sunday, but who take paid leave during the tour of duty.² This report provides the Sunday premium pay information for fiscal year 1994 and, where possible, compares Sunday leave usage for comparable pay periods both before and after issuance of the letter. We also determined the amounts the agencies we reviewed spent on overtime, night differential, and holiday premium pay for fiscal year 1994.

¹H.R. Rep. No. 103-741, 103d Cong., 2d Session 29, Sep. 22, 1994.

²OPM, FPM Letter 550-79, August 20, 1993.

Results in Brief

A 1993 court decision interpreting the leave provisions in title 5 of the United States Code³ held that federal employees who took leave on a Sunday for which they were scheduled to work (i.e., scheduled to work in advance of the work week) were entitled to Sunday premium pay even though they did not work. Accordingly, federal agencies began paying Sunday premium pay to employees who were on leave. Subsequently, Congress included language in the Department of Transportation's appropriations for 1995 that had the effect of nullifying the court's decision with respect to Federal Aviation Administration (FAA) employees. The provision in the appropriations law prohibits the payment of Sunday premium pay to an FAA employee who takes leave on a Sunday on which the employee was regularly scheduled to work. Extending a similar prohibition to all federal employees would reduce federal payroll costs by millions of dollars.

The five agencies we reviewed—FAA,⁴ U.S. Customs Service, and the Departments of Defense (DOD), Justice (DOJ), and Veterans Affairs (VA)—paid \$146.1 million in Sunday premium pay under 5 U.S.C. 5546(a) and 19 U.S.C. 267 in fiscal year 1994.⁵ Using leave information provided by the five agencies, we estimated that \$17.9 million of the \$146.1 million in Sunday premium pay was paid to employees on leave.

Based on comprehensive leave data we obtained from Customs and our analysis of leave records and other data for a portion of the employees at DOD, FAA, and VA, we estimated⁶ that leave usage on Sundays had increased anywhere from 0.5 to 2.7 percent at three of the agencies since the OPM letter stating that agencies must pay Sunday premium pay to employees on paid leave was issued. At DOD, leave data indicated that the percentage of employees taking leave after the issuance of the letter decreased by 2.3 percent.⁷

³Title 5 is the statutory authority that governs the appointment and pay setting for most federal employees. Federal employees are paid by authorities granted under a number of different laws contained in several titles of the United States Code.

⁴We limited our review of Sunday premium pay at the Department of Transportation (DOT) to FAA because Sunday leave usage data were only available for FAA.

⁵This amount does not include any Sunday premium pay paid under statutory authorities other than 5 U.S.C. 5546(a) and 19 U.S.C. 267.

⁶DOJ's leave trend could not be determined because DOJ, except for the Federal Bureau of Investigation (FBI), was not able to provide summarized leave information for leave periods before issuance of the OPM letter.

⁷The percentage of DOD employees taking leave on all days also decreased between these 2 periods.

In fiscal year 1994, federal agencies paid night differential, overtime, and holiday premium pay in the amounts of \$760.0 million, \$5,940.8 million, and \$419.2 million, respectively.

Background

The Sunday premium pay law provides that "an employee who performs work during a regularly scheduled 8-hour period of service . . . a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his basic pay."⁸ (See 5 U.S.C. 5546(a).) Prior to recent rulings by the courts, the long-standing administrative practice was not to pay Sunday premium pay to employees on annual or sick leave. In interpreting the Sunday premium pay provision, the Comptroller General held that payment of the premium to employees on annual or sick leave was not appropriate since the premium was necessarily dependent upon the employee actually performing work on a Sunday.⁹

In 1993, however, the United States Court of Appeals for the Federal Circuit affirmed a 1991 decision of the United States Claims Court holding that federal police officers were entitled to Sunday premium pay for scheduled hours they did not work and for which they were charged annual or sick leave.¹⁰ The court held that the leave laws prevent any reduction in customary and regular pay, including Sunday premium pay, regardless of whether the employee actually worked as scheduled on Sunday. Subsequently, in view of the court's decision, OPM issued instructions to agency heads stating that full-time federal employees covered by the Sunday premium pay provision in title 5 must be paid Sunday premium pay, not only for sick and annual leave absences but also for home and shore leave, leave for jury or witness service, military leave, funeral leave, and excused absences approved by agencies.¹¹ Customs also determined that the 50-percent Sunday premium pay provided for by 19 U.S.C. 267 was payable to Customs officers who took paid leave on Sundays.

⁸Customs officers are an exception and receive 50-percent premium pay for Sundays under 19 U.S.C. 267.

⁹See 53 Comp. Gen. 292 (1973); 46 Comp. Gen. 158 (1966).

¹⁰*Armitage v. United States*, 991 F.2d 746 (Fed. Cir. 1993), affirming *Armitage v. United States*, 23 Cl. Cl. 483 (1991).

¹¹OPM, FPM Letter 550-79, August 20, 1993.

In 1994, Congress addressed the issue of paying Sunday premium pay to employees on leave at FAA. During testimony for their fiscal year 1995 budget, DOT officials estimated that they would need \$6 million to pay Sunday premium pay to FAA employees on leave. The subsequently enacted Department of Transportation and Related Agencies Appropriations Act for fiscal year 1995, however, specifically stated that none of the funds in the bill would be available for paying premium pay under title 5 to any FAA employee unless such employee actually performed work during the time corresponding to such premium pay. An accompanying House Appropriations Committee Report¹² stated that “the Committee finds it incredible that the FAA should be forced to pay a premium for time not actually worked, while budget constraints required a hiring freeze on critical positions and the release of first-line air traffic control supervisors and key maintenance technicians.” The report said that the savings resulting from the restriction on Sunday premium pay would enable the Committee to include additional funding for air traffic staffing.

Scope and Methodology

We selected the five agencies in our review by identifying the four agencies—DOD, DOJ, FAA, and VA—that paid the most Sunday premium pay in fiscal year 1993¹³ and Customs because it was specifically identified in the conference report. These five agencies paid a total of \$178.0 million¹⁴ in Sunday premium pay to employees under all pay systems during fiscal year 1993, which comprised about 86 percent of Sunday premium pay paid by executive departments during that fiscal year.

We obtained the total amount of Sunday premium pay paid to federal agencies’ employees from OPM’s Workyears and Costs Reports for fiscal years 1993 and 1994. The five agencies provided the amounts of their Sunday premium payments for fiscal year 1994.

To determine the number of employees who took Sunday leave in fiscal year 1994 and the leave usage patterns of employees before and after issuance of the OPM letter, we analyzed pay and leave data. We did not verify the Sunday premium pay and leave data provided by the agencies’ payroll systems.

¹²H.R. Rep. No. 103-543, 103d Cong., 2d Sess. 46, June 9, 1994.

¹³Fiscal year 1993 data on Sunday premium pay were the most current information available at the time we selected agencies for review.

¹⁴This figure includes the total amount of Sunday premium payments of the Departments of the Treasury and Transportation because the amounts paid solely by Customs and FAA, respectively, were not readily available.

For Customs, we obtained leave information for all the agency's employees for fiscal years 1993 and 1994. For DOJ, leave information was available for all employees, but only for calendar year 1994.¹⁵ Both DOD and VA are in the process of automating their time and attendance systems, but the majority of their employees' time and attendance records for fiscal year 1994 were not in an automated system. The largest, single DOD automated payroll system does have time and attendance information for approximately 397,000 of the 914,000 civilian DOD employees worldwide. We obtained Sunday leave data for the employees scheduled to work on Sundays from this system for calendar year 1994 because these data were more readily available than for fiscal year 1994, and we used these data to estimate total Sunday leave for DOD. To obtain information on VA employees who took leave on Sundays, we selected samples of 180 of the 886 employees who received Sunday premium pay at 2 of VA's 186 installations that paid Sunday premium pay in fiscal years 1993 and 1994 under title 5. Our samples are projectable only to all the employees at these two VA installations. We analyzed these 180 employees' time and attendance records for fiscal years 1993 and 1994. FAA provided Sunday leave and pay data for most of its employees but only from April 4, 1993, through May 28, 1994, because it is in the process of converting to a new payroll system.

Although we preferred to compare the hours employees were scheduled to work with the actual annual and sick leave hours used rather than the number of employees scheduled and the number of instances employees took leave, only Customs and VA provided us with the hours employees were scheduled to work on Sunday. Also, none of the agencies had readily available data on which employees used annual and sick leave on the same Sunday or worked and took leave on the same Sunday. Therefore, for consistency, we used the number of employees scheduled to work on Sunday and the number of instances those employees took leave to determine leave usage rates. Using the number of employees scheduled to work and the instances employees took leave can inflate the leave usage percentage since an employee who worked and took leave part of the day would be counted in the same manner as an employee who took leave for the whole day. Also, an employee who took both annual and sick leave on the same Sunday would count as two leave instances of 8 hours on the same day.

Our calculations at the two agencies for which we had both the numbers of employees scheduled to work and taking leave and the hours of work

¹⁵Only FBI leave data were readily available for fiscal year 1993.

scheduled and hours of leave taken, however, indicated a relatively small variance between the alternative leave usage calculations. The leave usage percentage based on employees at the two VA installations and Customs was 1.2, 1.5, and 2.5 percent higher than the hourly based leave usage percentage, respectively.

Customs provided the actual amounts of Sunday premium pay paid to employees on leave. To make estimates of the amounts paid to employees on leave at DOD, DOJ, FAA, and VA, we first determined the percentage of employees scheduled to work Sundays who used leave. We then multiplied this percentage by the respective agency's total Sunday premium pay for fiscal year 1994. DOD, FAA, and VA estimates, although not based on a statistically valid sample for projection to all employees, were computed to provide some indication of the amount of Sunday premium pay paid to employees on leave.

We requested comments on a draft of this report from the secretaries of the departments or their designees and the Director of OPM. Their comments and our evaluation of them are discussed on pages 9, 10, and 11 of this report.

Our work was done in Washington, D.C., between December 1994 and April 1995 in accordance with generally accepted government auditing standards.

Sunday Premium Pay Paid to Employees on Leave

Table 1 shows that the five agencies we reviewed paid a total of \$146.1 million in Sunday premium pay to employees in fiscal year 1994. Of this amount, the agencies paid an estimated \$17.9 million, or 12.3 percent, to employees who used leave on one or more Sundays in fiscal year 1994.

Table 1: Sunday Premium Pay Paid to Employees Scheduled to Work and Employees on Leave on Sundays in Fiscal Year 1994

Dollars in millions

Agency	Employees scheduled Sundays ^a	Sunday premium pay	Percentage of employees on Sunday leave ^{bc}	Estimated amount paid employees on leave
Customs	36,490	\$4.7	6.9%	\$0.3
DOD	566,569 ^d	39.6	11.9 ^e	4.7 ^e
FAA	416,894	45.3	14.5 ^e	6.6 ^e
DOJ	330,243	21.2	11.0 ^e	2.3 ^e
VA	4,253 ^d	35.3	11.3 ^e	4.0 ^{ef}
Total		\$146.1		\$17.9

^aRepresents the number of instances all employees in the agency were scheduled to work on Sundays during the year.

^bRepresents the percentage of employees scheduled to work on one or more Sundays in a pay period who took leave.

^cAs explained in the scope and methodology section of this report, we would have preferred to compare the hours employees were scheduled to work with leave hours used rather than the number of employees scheduled and the number of instances employees took leave, but we did not have sufficient hourly leave information for all agencies.

^dRepresents only the number of instances a portion of the employees were scheduled to work Sundays at DOD for calendar year 1994 and at VA for fiscal year 1994. (See the scope and methodology section of this report.)

^eSee scope and methodology section for explanations of how these estimates were derived.

^fVA's leave usage percentage is based on only two installations; our projection of amounts paid to employees on leave at these two installations is \$57,179.00.

Source: GAO analysis of Sunday premium pay and leave information provided by the agencies.

Sunday Leave Trends Before and After OPM Letter

Table 2 shows that at Customs, FAA, and VA, a higher percentage of employees took leave on Sundays after OPM's August 20, 1993, letter requiring agencies to pay employees on leave at the Sunday premium rate.¹⁶ One agency, DOD, experienced a decrease in the percentage of employees taking leave on Sundays. Sufficient leave information was not available for us to make the comparison at DOJ.

¹⁶DOJ and DOD officials cited several reasons that leave usage may have increased after August 20, 1993, including the Leave Transfer Program being made permanent and approval of the Family Medical Leave Act.

Table 2: Sunday Leave Trends for Comparable Periods Before and After OPM's Letter on August 20, 1993

Agency	Percentage of employees on leave Sunday before 8/20/93 ^a	Percentage of employees on leave Sunday after 8/20/93 ^a	Net change in leave usage
Customs	6.2%	6.7%	+0.5%
DOD	13.3	11.0 ^d	-2.3
FAA	12.1 ^b	14.6 ^b	+2.5
DOJ	N/A ^c	11.0 ^d	N/A ^c
VA	9.0	11.7	+2.7

^aPercentages are based on comparable periods before and after OPM's August 20, 1993, letter but are not for the same periods at all agencies.

^bFAA was not able to provide leave data for a sufficient number of comparable pay periods before and after the letter for us to compare similar periods, so FAA employees leave usage for pay periods from April 4 to August 21, 1993, were compared to leave usage for pay periods from August 22, 1993, to May 28, 1994.

^cDOJ employees' leave record information was not available from a systematically maintained database for pay periods prior to 1994 except for FBI employees.

^dFigure represents calendar year 1994.

Source: GAO analysis of Sunday leave usage information provided by the agencies.

Other Premium Pay Paid by Agencies

Agencies pay other types of premium pay for work performed by employees. Among these types of premium pay are overtime,¹⁷ holiday,¹⁸ and night differential.¹⁹ Table 3 presents OPM's preliminary figures²⁰ for the amounts of these types of premium pay paid to employees by the five agencies we reviewed in fiscal year 1994.

¹⁷Overtime premium pay is an additional compensation paid to an employee for work performed in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek.

¹⁸Holiday premium pay is additional compensation paid to an employee who performs work on a holiday that is not overtime work.

¹⁹Night differential premium pay is a 10-percent differential payment for regularly scheduled work performed by employees between 6:00 p.m. and 6:00 a.m. Customs officers are an exception, receiving 15- to 20-percent premium pay for working between 3:00 p.m. and 8:00 a.m.

²⁰OPM provided these preliminary fiscal year 1994 figures with the qualification that OPM is in the process of performing quality assessments of the figures and reconciling with the agencies any data problems they detect with the figures. Thus, some revisions to the figures are possible.

Table 3: Overtime, Holiday, and Night Differential Premium Pay Paid by Selected Agencies in Fiscal Year 1994

Dollars in millions

Agency	Overtime pay	Holiday pay	Night differential pay
Treasury ^a	\$352.3	\$9.2 ^b	\$26.1 ^b
DOD	992.0	45.0	62.1
DOT ^a	36.6	41.5	29.8
Justice	404.6	23.8 ^b	21.2
VA	130.2	85.8	94.6
Total for the five agencies	\$1,915.7	\$205.3	\$233.8
Total for all federal agencies	\$5,940.8	\$419.2	\$760.0

^aCustoms' and FAA's premium payments are part of the Departments of the Treasury's and Transportation's total payments, respectively.

^bOPM has requested the respective agencies to revalidate these figures based on a preliminary quality assessment that indicated the figures may be suspect.

Source: OPM's Fiscal Year 1994 Work Years and Personnel Costs Survey (unpublished data).

Conclusion

Employees who take leave when scheduled to work on Sunday receive in the aggregate millions of dollars in Sunday premium pay. Until recently, Sunday premium pay was generally dependent upon employees actually performing work on a Sunday. At FAA, Congress prohibited payment of Sunday premium pay to employees on leave resulting in an estimated savings of \$6 million in fiscal year 1995. Additional savings could be achieved at other agencies, such as those we reviewed, if Sunday premium pay were limited to employees who work as scheduled on Sunday.

Matter for Consideration by Congress

To preclude federal employees from receiving Sunday premium pay while on leave and to reduce governmentwide employment costs, Congress may wish to consider requiring that employees must actually work on Sunday to receive Sunday premium pay.

Agency Comments and Our Evaluation

We received written and oral comments from DOD and Customs. Their written comments are reprinted in appendixes I and II. We received oral comments from FAA, DOJ, OPM, and the Veterans Health Administration (VHA), VA during May 1995. The officials included the Audit Liaison, DOT; the Director, Audit Liaison Office, DOJ; the Assistant Director, Office of Compensation Policy, OPM; and several Directors of VHA, VA. Customs, DOD, FAA, and OPM generally agreed with our findings, conclusion, and matter for

congressional consideration. DOJ and VHA expressed concerns that the matter for consideration by Congress section of this report considered only cost savings and did not consider other measures they consider relevant, like the impact of not paying Sunday premium pay to employees on leave may have on agency operations, including the agencies' ability to recruit, retain, and schedule law enforcement officers, health-care workers, and other employees who routinely work on hard-to-staff tours, such as Sundays. VHA stated that even though VA uses many special salary rates for employees in hard-to-fill positions, VA still has difficulty hiring key health-care personnel, such as radiology technicians. VHA also believed that if employees were not paid premium pay when taking leave on Sundays they would be less willing to work on Sundays. Both VHA and DOJ indicated they believe employees may become demoralized if a benefit were to be taken from them.

In addition, VHA was concerned that the \$4.0 million projection relating to premium pay paid to employees taking leave on Sundays is based on leave usage rates at 2 of over 300 installations and is, therefore, not a statistically valid estimate for all VA installations. VHA said that the two installations we reviewed are larger installations with active unions and that these types of installations may experience higher leave usage rates. Thus, VHA is concerned that Congress may take action and eliminate Sunday premium pay to employees on leave and reduce VA's budget by \$4.0 million based on the projection. VA would not have sufficient funds to pay its employees if all VA installations in aggregate experienced a Sunday leave rate lower than the 11.3 percent experienced at the two installations.

We appreciate DOJ's and VHA's concerns regarding the possible impact on recruitment and retention of terminating the payment of Sunday premium pay to employees on leave. However, we believe that the specific legislative authorities Congress has provided federal agencies to address recruitment and retention problems are still the most appropriate ways to address these issues. The Federal Employees Pay Comparability Act of 1990 authorized recruitment and retention bonuses of up to 25 percent of basic pay (5 U.S.C. 5753 and 5754). Furthermore, agencies can request OPM to approve special salary rates for specific occupations, grades, and locations to alleviate existing or likely recruitment or retention problems (5 C.F.R. 530.303).

We do not concur with VHA's concerns that employees will not be willing to work on Sundays. We believe that since the employees will still receive premium pay when they work on Sunday and do not take leave, they

should still be motivated to work on Sundays. Regarding VHA's concerns over our projections of leave usage and the estimated cost of paying Sunday premium pay to employees on leave, we have added additional qualifications to table 1 and believe our report adequately explains in the table and the scope and methodology section the limitations of our VA projections.

Technical comments provided by the agencies were incorporated in the final report where appropriate.

We are sending copies of this report to the Chairmen and Ranking Minority Members, House and Senate Appropriations Committees; the Chairmen and Ranking Minority Members, House and Senate Appropriations Subcommittees on Transportation and Related Agencies; the Secretaries of the Departments of Defense, Justice, Transportation, the Treasury, and Veterans Affairs; and the Director of the Office of Personnel Management. Copies will also be made available to others on request.

The major contributors to this report are listed in appendix III. If you have any questions about this report, please contact me on (202) 512-5074.



Nancy Kingsbury
Director
Federal Human Resource
Management Issues

Comments From the Department of Defense



FORCE MANAGEMENT
POLICY

ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



MAY 11 1995

Ms. Nancy Kingsbury
Director, Federal Human Resource Management Issues
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Kingsbury:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "SUNDAY PREMIUM PAY: Millions of Dollars of Sunday Premium Pay are Paid to Employees on Leave," dated April 21, 1995 (GAO Code 966639/OSD Case 9903).

The DoD has reviewed the draft report and concurs without further comment. Suggested technical changes have been provided separately. The Department appreciates the opportunity to review the report in draft form.

Sincerely,


F. Pang



Comments From the Department of the Treasury



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

DATE: MAY 10 1995

Ms. Nancy Kingsbury
Director
Federal Human Resource Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Kingsbury:

Thank you for your letter of April 21, 1995. Your letter has been referred to my office for a reply. We appreciate you giving us the opportunity to comment on the draft report entitled "Sunday Premium Pay."

We have reviewed your draft report, note that there are no recommendations for Customs, and have no comments or proposed changes to the draft. We have also telephonically advised Thomas Davies, Evaluator-in-Charge, that we have no comments regarding the draft report.

If you need any further information regarding this report, please contact Mr. J. Tony Del Moral, Director, Evaluation Oversight and Analysis Team, at 927-0194.

Sincerely

A handwritten signature in cursive script that reads "Earl F. Walter".

Earl F. Walter
Director
Office of Planning and Evaluation

Major Contributors to This Report

**General Government
Division, Washington,
D.C.**

Larry H. Endy, Assistant Director, Federal Human Resource Management
Issues
Thomas Davies Jr., Evaluator-in-Charge
Jeffrey Dawson, Evaluator

**Office of the General
Counsel, Washington,
D.C.**

Alan Belkin, Assistant General Counsel
V. Bruce Goddard, Senior Attorney

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

**Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066, or TDD (301) 413-0006.**

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (301) 258-4097 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Mail
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

