

## *GALLIMORE v. UNITED STATES*

### **UPDATE** **August 19, 2019**

On December 5, 2018, Class Counsel filed its motion requesting the Court enter judgments in favor of the individual Class Members for Sunday Premium Pay damages, based on calculations of those award amounts as agreed upon by both parties. However, on April 15, 2019, the Government filed a supplemental brief challenging, not the calculations, but the time period to be covered in calculating judgment amounts, raising a novel argument for the first time that the Complaint in this action must be formally amended as time goes by during the pendency of the case, even though the Complaint alleged an ongoing violation and the Judge's earlier decision granted Sunday premium pay on an ongoing basis going forward. Class Counsel filed a response on May 9, 2019, and the Government filed its reply in further support of its arguments by the Court's deadline of May 24, 2019. The written submissions on this issue may be found on our website as a combined *pdf* document named "Supplemental Briefs Addressing Award of Damages." Oral argument was held on June 19<sup>th</sup> for the Court to hear orally from the parties on this issue. The Court is currently considering the arguments of both parties and will render a decision. While there appears to be no case precedent to support of the Government's arguments, we do not yet know how the Court will rule.

While we are still awaiting the Court's decision as of this date, we hope to hear something within the next month. Waiting is frustrating for us, just as it is for the Class Members, particularly when we were so close to the entry of judgments, but we are certain that the Court is doing its due diligence to support any decision it makes and that work takes time. Nevertheless, we have reason to expect a decision sometime next month, based on how long it has taken the Court to rule on other substantive issues of this nature. Unfortunately, that is only a prediction, and not a guarantee.

Once the Court renders its decision, it will either enter the judgments as currently calculated or order the parties to revise the calculations based on the Court's determination of the merits of the Government's arguments. We will update you as soon as we have a determination from the Court.

Once this issue has been fully resolved, judgments will be entered for the awards to each Class Member.

Please see below for further information.

### **ANSWERS TO FREQUENTLY ASKED QUESTIONS**

#### **Is entering the judgments the last step?**

No. Once judgments are entered, the Government has 60 days to file any appeal. If it does so, there will be a period of about two months after the initial filing for Class Counsel to file

opposition papers and the Government to file a reply to that opposition. The parties will then have an opportunity to be heard by the Court in oral argument on a date set at the Court's discretion. After oral argument, the Court can sometimes take up to a year or more to decide the matter. Overall, we think the appeal process will take a year or even two.

If the Class Members prevail on the appeal, we anticipate that awards will then be distributed.

If there is no appeal, we will post information as to how long it will be before payments are made to our voicemail notification system, set up as Option 4 on the Alterman & Boop LLP phone number of (212) 226-2800, and on our website at [www.altermanboop.com](http://www.altermanboop.com)

**How can I find out what my proposed award amount is?**

Please see the pdf document posted to our website: "Proposed Award Amounts"

**Can I challenge the total Sunday hours I am being credited with?**

The data on which the calculations are based comes from the Government's payroll records derived from the hours you inputted into your computers on a daily or weekly basis. If a payroll error occurred at the time of input – i.e., if there was a payroll period when you did not get paid for all of the hours you worked or, more specifically, all of the Sunday hours you worked, you would have to consult with your own counsel to determine if there is any means to "appeal" and the time limits for doing so.

However, the following may be helpful for you in reviewing your total award:

1. As a general matter, all Class Members were previously paid for the Sunday hours worked; what they did not get was the additional 25%. For example, if in a pay period a Class Member received pay for 40 hours of work, 8 of which were Sunday hours, and your hourly rate was \$17/hour; the Sunday Premium Pay award for that period would be  $8 \times \$17 \times 25\%$  or \$34.00. The Sunday Premium Pay award would not be 125% of your hourly rate times 8 because you were already paid the straight hourly wage for those 8 hours.
2. The methodology used by Rust was to multiply the number of Sunday hours you worked by your pay rate, by 25%, by the applicable interest rate, by the number of years from that pay period to the date of calculation.

3. The awards cover the time period starting from October 28, 2005 through December 31, 2017. For those of you who worked prior to October 28, 2005, we could not go back further in time to capture the premium for those Sunday hours because of the Court's ruling on the applicable statute of limitations. We have asked the Court to direct additional retroactive payment for the period from January 1, 2018 to the date the Court enters judgment and to direct the payment of Sunday premium pay going forward.
4. Be aware that the lawsuit does not include recovery for hours worked while someone served in any position other than Part-Time Field Representative or Part-Time Senior Field Representative. Hours worked while in Intermittent status are not covered by this lawsuit, nor are hours worked as a "Field Supervisor" or "Lead Field Representative." Because we have seen frequent title changes among members of the Class, we anticipate that some people who worked many more Sunday hours than their award would indicate were not a Part-Time Field Representative or Senior Field Representative during the entire period covered by the lawsuit.
5. We will be reviewing and getting additional information about the title held and Sunday hours accrued for a small number of Class Members who have reason to believe their awards are incorrect and have documentation to support this – i.e., the award does not reflect the Sunday hours reported at the time and for which pay was received with the exception of the Sunday premium. Initially, we will do this on a test basis to see if any errors appear to have occurred. If this review reveals any basis for a change in any awards, a motion for correction must be made no later than one year from the entry of judgments.

**Will my award include a contribution to my Thrift Savings Plan?**

Yes. We have asked the Court to direct that the government not just make the required tax deductions and payments related to the awards, but also appropriate contributions to your Thrift Savings Plans, if any.

**Will I be paid for Sunday hours going forward?**

If there is no appeal, then we would expect all Sunday hours to be paid going forward and most likely from the beginning of 2018. If the Government appeals, you would not likely get Sunday premium pay going forward unless and until that appeal is heard and rejected.

**Will accrued interest be included in the award?**

The calculations we have submitted to the Court include interest.

**Will attorney fees/costs come out of my judgment?**

At present, we do not know whether attorneys' fees and costs will ultimately be paid out of the individual awards or will be awarded separately by the Court. Rest assured, notice will be sent to all Opt-In Class members when any motion for attorneys' fees and costs is made and in no event will attorneys' fees and costs be payable without the Court's approval.

**What happens if a Class Member passes away before awards are made?**

If a Class Member passes away before awards can be distributed, the beneficiaries of that Class Member's estate are entitled to receive the award. Such beneficiaries (usually named in a Will or court order) should contact us directly and we will work with them to ensure the proper proofs are provided to the Court to have them substituted as the recipient of the Class Member's award.

**Will payments be made by direct deposit or by check in the mail?**

We do not know at this time how payments will be processed. We will provide more information about this when the time comes to distribute awards.

**What do I do if my mailing address has changed?**

Please send notice of your new address information to: [sksmith@altermanboop.com](mailto:sksmith@altermanboop.com)

Please include your full name, your old address, and your new address.