

It's Not Over Yet

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Section 405 of the federal Salary and Fringe Benefits Act, also known as the Sunday Premium Pay Act, ensures that certain federal employees who performed work on Sundays receive additional compensation. In 2009, the Federal Circuit held in *Fathauer v. United States* that the word “employee” in this statute includes part-time employees. Up to that time, the government had interpreted the statute to apply only to full-time employees, and had not given Sunday premium pay to part-timers. On October 14, 2011, Annette Jones sued in the U.S. Court of Federal Claims on behalf of herself and a proposed class of part-time federal employee seeking to recover back pay to March 2003 they believed they were entitled to be paid under this statute.

In 2014, the Court denied Jones’ motion to certify a class for all part-time federal employees, holding instead that the class would be certified to include only part-time employees of the Veteran’s Administration. In October 2015, Jones moved to amend the class to include federal part-time employees in all agencies.

Before the Court could rule on that motion, the trial judge died and on June 23, 2015, the case was reassigned to another judge on the Court. In reviewing the pending motion, the Court noted that Rule 23, the rule governing class certification, sets forth five requirements that Jones must satisfy to support certification of a class in the case: numerosity, commonality, typicality, adequacy, and superiority. Jones argued that the proposed class included many employees, besides those employees covered by the Court’s class certification order, working part-time at federal agencies who also were not paid Sunday premium pay. Jones therefore argued that all five factors under Rule 23 had been met.

The Government argued that a class should not be certified because there are individualized inquiries unique to each agency, including payroll processing and time-and-attendance systems. The Government also contended that Jones had failed to establish that the named plaintiffs are typical of the other members of the proposed class. The Government also argued that Jones had failed to

The Court held that Jones met all requirements of Rule 23 except for the requirement of showing that a common question of law predominates over questions affecting individual members. But the Court refused to flatly deny class certification, stating that it was keeping the issue open subject to later development of facts. The Court thus denied Jones’ motion to certify a class for all part-time federal employees without prejudice.

Read Judge Braden’s full decision [here](#).