



# NATIONAL FEDERATION OF FEDERAL EMPLOYEES



**Below are answers to the most common questions NFFE has received since putting out its Notice to Join the Lawsuit:**

**QUESTION:** *Has the lawsuit been filed?*

**ANSWER:** The lawsuit has not yet been filed. Employees must sign up individually as plaintiffs. NFFE is currently in the process of publicizing to Forest Service employees that a lawsuit will be filed and encouraging them to send in their Retainer and Consent to Sue forms. The lawsuit will be filed once a significant number of employees have sent in Retainer and Consent to Sue forms.

**QUESTION:** *Can I join the lawsuit after it is filed in the Court?*

**ANSWER:** Yes, employees can join the lawsuit with no problem for the first 60-90 days after the lawsuit is filed in court. After that, the Court must grant permission to add more employees to the lawsuit. There is a benefit in being part of the lawsuit from the beginning because it maximizes the back pay period.

**QUESTION:** *How many years of back pay are employees eligible for? Is there an advantage to joining the lawsuit at the beginning?*

**ANSWER:** By participating in the lawsuit from the beginning, employees are eligible for back pay for 2-3 years prior to the filing of the lawsuit plus any back pay owed during the time period the litigation is on-going. Employees who join the lawsuit later will have a shorter back pay time period. For example, if an employee joins the lawsuit from the beginning and the lawsuit is filed on June 1, 2010 and the litigation were to last until June 1, 2013, the back pay period would be 5 or 6 years. The employee would be eligible for damages if and when they were paid improperly during that period. In contrast, if an employee joins the lawsuit on June 1, 2011 and the litigation lasts until June 1, 2013 the back pay period would only be 4-5 years.

**QUESTION:** *What determines whether the back pay period is for 2 or 3 years?*

**ANSWER:** It is 3 years if the Court determines that the Agency acted willfully in violating the FLSA.

**QUESTION:** *What is the purpose of the lawsuit?*

**ANSWER:** The purpose of the lawsuit is to correct any mistakes the Forest Service has made in classifying employees under the Fair Labor Standards Act, which is one of the laws that affect how federal employees are paid when they work beyond 8 hours in a day or 40 hours in a week. The lawsuit will also seek back pay for any errors that the Forest Service has made with respect to overtime pay and the cashing out of comp time. The CBA does not allow FLSA classification issues to be addressed through the grievance procedure.

**QUESTION:** *Why does the Retainer Agreement ask for my social security number? Do I have to provide it? What steps does the law firm take to secure my personal information?*

**ANSWER:** The social security number is required because the law firm will need it to 1) ask for employee payroll data from the government during the litigation; and 2) if the employee receives any back pay, the information will have to be given to the IRS which also requires a full Social Security number. If the employee does not provide the number initially, the law firm will have to ask the employee for it during the litigation which could slow the process down. Woodley & McGillivray keeps all documents with personal information in locked cabinets with limited access. In addition, any information that given digitally is maintained on password protected computers.

**QUESTION:** *Would funds for Back Pay come out of the Agency's pocket and will it affect the Agency's budget?*

**ANSWER:** Any back pay damages associated with a judgment of the court or with a settlement will be paid out of a Judgment Fund, administered by the Treasury Department. Back pay damages will not be funded through Forest Service appropriations or other agency funds.

**QUESTION:** *If you are in a nonprofessional non-managerial, non-supervisory position or series, are you supposed to be nonexempt?*

**ANSWER:** As a general rule, a nonprofessional, non-managerial, non-supervisory employee will more than likely be non-exempt if coded properly.

**QUESTION:** *Can you tell me more about the law firm of Woodley & McGillivray?*

**ANSWER:** Woodley & McGillivray is a Washington D.C. based law firm that specializes in representing employees and unions. One of its specialties is FLSA actions. Greg McGillivray, who will be the lead attorney, has litigated numerous cases on behalf of federal employees in the U.S. Court of Federal Claims, which is where this case will be filed. You can get more information on their website [www.overtimepay.com](http://www.overtimepay.com). NFFE is confident that the firm will do an excellent job representing Forest Service employees as well.

**QUESTION:** *What expenses are employees responsible for?*

**ANSWER:** Employees who join the lawsuit are not responsible for any out of pocket costs. As is typical in a contingency fee case, the law firm receives a percentage of the money it wins on an employee's behalf. (The fee for this case is 25%) The law firm will also deduct costs associated with pursuing the litigation. NFFE has agreed to cover the firm's out of pocket costs further increasing any payout employees will receive.

**QUESTION:** *How long will the litigation take?*

**ANSWER:** On average, this type of litigation takes approximately 2-3 years. There is no way to predict how long this particular litigation will take to complete.

**QUESTION:** *How do I join the lawsuit if the Forest Service has incorrectly coded me as being out of the bargaining unit?*

**ANSWER:** The easiest way to resolve an incorrect coding regarding bargaining unit status is to file a Form 1187 with the Agency. NFFE has a process in place with the Forest Service whereby the incorrect coding is resolved within a few weeks of an employee filling out and submitting a Form 1187.