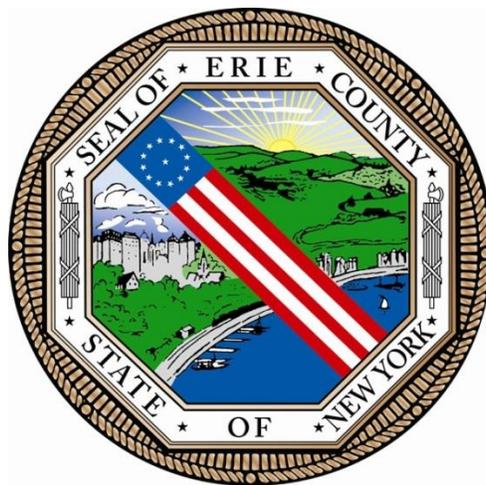


APRIL 2018

**ERIE COUNTY DEPARTMENT OF PERSONNEL
AUDIT OF PAID LEAVE
JANUARY 1, 2016 THROUGH JUNE 30, 2017**



**STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER**

**HON. STEFAN I. MYCHAJLIW
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



October 16, 2017

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a compliance audit of the operating procedures and processes handled by the Erie County (County) Department of Personnel (Personnel) with respect to paid leave for the period January 1, 2016 through June 30, 2017.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our objectives were to determine whether paid leave procedures comply with applicable Collective Bargaining Agreements (CBAs), New York Civil Service Laws, and the Erie County Policies and Procedures Manual (Manual); whether documentation and records are properly maintained and sufficiently support payments of leave; and whether adequate and effective internal controls related to the administration of paid leave exist. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish these objectives, we selected and tested a sample of payroll transactions for active and separated employees from various County departments to obtain reasonable assurance that they were in compliance with established policies and procedures. Occurrences such as vacation, sick leave, personal leave, compensatory time, accumulated leave payouts, and other paid leave were thoroughly examined. Our testing identified some weaknesses in Personnel's paid leave practices, which did not affect our overall opinion but are addressed in this report.

We did not evaluate the reliability and integrity of the payroll and timekeeping data obtained from the County's SAP Software, since this system is reviewed by the County's external auditors as part of their annual audit of the County's financial statements. While we reviewed the hard-copy documents that are based upon this system, we do not express any opinion or conclusions about the reliability or accuracy of such records since we did not audit the internal controls of the system.

Management of Personnel is responsible for establishing and maintaining a system of internal control. The objectives of such a system are to provide management with reasonable, but not absolute, assurance that transactions are executed in accordance with management's authorization

and are recorded properly. Because of inherent limitations in the system of internal control, errors or irregularities may nevertheless occur and not be detected.

In our opinion, for the audit scope period examined, Personnel was in compliance with applicable CBAs, New York Civil Service Laws, and the Manual for the processing of payroll and paid leave transactions, except for the failure to specifically address the matter of “other paid leave” and “administrative leave” in written policies and procedures.

No specific matters adversely affecting compliance with applicable laws, rules, and procedures came to our attention, except as disclosed in this report. Our audit was made for the purpose previously described, and would not necessarily disclose all instances of non-compliance with respect to areas of operations not audited.

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BACKGROUND

Personnel is responsible for implementing and maintaining programs and services that support and facilitate the recruiting, selection, hiring, development and retention of local government and school district employees located in the County based upon merit and in accordance with New York State Civil Service Laws and Regulations. The department also provides a full range of personnel administration services. These include position classification and compensation; fringe benefit development and administration; labor and employee relations; employee training and development; coordination of employee recruitment and selection; evaluation; and discipline programs and procedures.

Employee compensation and benefits are a significant operating cost to the County. As such, Personnel is responsible for producing approximately 5,150 payroll checks every other week and administering paid and unpaid leave entitlements for all employees of the County in accordance with applicable CBAs, New York State Civil Service Laws, and the Manual.

AUDIT FINDINGS

I. ABSENCE OF POLICIES AND PROCEDURES

The Manual does not specifically address the subject matter of other paid leave. We did not identify any single repository of policies and procedures related to the authorization, payment, and reporting of other paid leave, as well as no mechanism that is in place to clearly and easily communicate how departments and employees are to manage other paid leave.

During our audit, we reviewed the authorization and payment of other paid leave to employees in various stages of employment. We identified a number of instances where leave is not always reported accurately or consistently within or among departments. Although the ultimate decision lies with the Commissioner of Personnel, the request for leave is input for approval at the supervisory level, and thus it is of the utmost importance that there are common guidelines and an understanding of employee entitlements. Upon examination of notes submitted with other paid leave requests, it was apparent that various departments within the County were unclear as to when and how to exercise discretion when granting other paid leave.

We also noted that employees who were granted other paid leave continued to accrue leave benefits. These employees received other paid leave for the week prior to separation, accrued leave during a period work was not performed, and were allowed to cash out those benefits in the week following their last day of employment. None of these could be substantiated by the Manual or the individual CBAs, as they are silent with respect to the accrual of benefits when a person is no longer working.

Based on our analysis of payroll data, sixty-one (61) individuals from thirteen (13) County departments and offices lacked clear explanation as to why they received other paid leave for the

period January 1, 2016 through June 30, 2017. Other paid leave payments totaled \$125,411.82 plus \$22,125.13 in accrued benefits for approximately 5,309 hours. Of these sixty-one (61), twenty-seven (27) received payments for the week following employee separation, twenty (20) were placed on administrative leave pending a conduct-related investigation, and fourteen (14) were paid other paid leave for medical evaluations, mandatory hearings, grievance procedures, and other work-related matters. For those departments / offices not noted in the table below, no exceptions were noted.

| <i>Department</i> | <i>Number of Employees</i> | <i>Other Paid Leave</i> | | <i>Accrued Benefits</i> |
|--|----------------------------|-------------------------|---------------|-------------------------|
| | | <i>Hours</i> | <i>Amount</i> | |
| Central Police Services | 2 | 56.00 | \$ 1,680.75 | \$ 420.94 |
| County Clerk | 8 | 101.12 | 1,436.32 | 1,163.65 |
| Department of Health | 2 | 184.00 | 5,767.05 | 268.55 |
| Department of Mental Health | 1 | 1.67 | 50.75 | 327.60 |
| Department of Parks, Recreation and Forestry | 1 | 248.00 | 6,326.24 | 999.70 |
| Department of Personnel | 1 | 16.00 | 271.34 | 156.70 |
| Department of Public Works | 2 | 32.37 | 576.70 | 322.23 |
| Department of Social Services | 33 | 3,714.25 | 89,478.43 | 13,173.25 |
| Division of Sewer Management | 3 | 69.10 | 1,106.43 | 452.15 |
| Information & Support Services | 1 | 216.00 | 5,796.36 | 991.82 |
| Jail Management (Sheriff) | 2 | 64.00 | 1,333.75 | 577.44 |
| Probation | 2 | 48.00 | 623.86 | 204.38 |
| Youth Services Division | 3 | 558.50 | 10,963.84 | 3,066.72 |
| Totals | 61 | 5,309.01 | \$ 125,411.82 | \$ 22,125.13 |

Departmental practices vary across County. Departments are not properly reporting other paid leave within their unit due to the lack of formalized policies and procedures. Clear and concise definitions and guidelines should be developed so that cases of other paid leave can be easily identified, addressed accordingly, and consistently applied throughout the County.

WE RECOMMEND that management of Personnel develop and implement explicit, consistent, and formally approved policies and procedures over other paid leave. These procedures should include:

- Guidelines that clearly distinguish and specifically address the purpose and use of other paid leave.
- Identification of the circumstances in which the application of other paid leave is appropriate.
- Implementation of controls to ensure that other paid leave is granted for purposes consistent with the stated intent of such leave.

II. ADMINISTRATIVE LEAVE WITH PAY

Administrative leave is classified as other paid leave for payroll purposes. Departments have been instructed that other paid leave is not be used without the consent and approval from the Department of Personnel. We did not locate nor were we provided with any policy, procedure, or

directive related to the authorization, payment, and reporting of administrative leave. No mechanism is in place to clearly and easily communicate how departments and employees are to manage administrative leave.

Communication from the Department of Labor Relations, which frequently deals with such matters, states that administrative leave is not specifically addressed in the Manual or the CBAs, but it is an understood management practice and right used by the County to involuntarily place an employee on paid leave pending an investigation and preceding charges, without violating the employees' contractual rights or New York State Civil Service Law § 75.

New York State Civil Service Law § 75 (3) states that "pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period."

Our analysis of payroll data for the period January 1, 2016 and June 30, 2017 noted that twenty (20) individuals were placed on paid administrative leave for a total of 3,588 hours. They received \$91,795.41 in other paid leave and \$13,101.63 in accrued benefits. Of these twenty (20), nine (9) remain presently employed with Erie County and eleven (11) were removed given the conduct-related investigation results.

| <i>Department</i> | <i>Number of Employees</i> | <i>Other Paid Leave</i> | | <i>Accrued Benefits*</i> |
|---|----------------------------|-------------------------|---------------------|--------------------------|
| | | <i>Hours</i> | <i>Amount</i> | |
| <i>Active Employees:</i> | | | | |
| Department of Health | 1 | 136.00 | \$ 3,388.03 | \$ 268.55 |
| Youth Detention Services | 1 | 206.50 | 3,540.85 | 845.00 |
| Department of Social Services | 5 | 1,568.00 | 52,118.50 | 6,100.86 |
| Division of Sewer Management | 2 | 40.00 | 681.19 | 339.63 |
| | 9 | 1,950.50 | \$ 59,728.57 | \$ 7,554.04 |
| <i>Separated Employees:</i> | | | | |
| Central Polices Services | 1 | 32.00 | \$ 1,249.54 | \$ 420.94 |
| Department of Personnel | 1 | 16.00 | 271.34 | 156.70 |
| Department of Public Works | 1 | 28.00 | 502.77 | 165.91 |
| Department of Social Services | 7 | 1,313.45 | 23,716.95 | 3,804.34 |
| Department of Parks, Recreation, and Forestry | 1 | 248.00 | 6,326.24 | 999.70 |
| | 11 | 1,637.45 | \$ 32,066.84 | \$ 5,547.59 |
| Totals | 20 | 3,587.95 | \$ 91,795.41 | \$ 13,101.63 |

* Accrued benefits do not include any healthcare or insurance-related benefits.

For the eleven (11) employees that were removed pending the conduct-related investigation results, it cost the County \$32,066.84 in other paid leave payments and \$5,547.59 in accrued benefits payments, totaling \$37,614.43 (Appendix A).

According to New York State Civil Service Law § 75 (3), employees may be suspended for up to thirty days rather than put on administrative leave; the results of conduct-related investigations would govern whether the employees will recoup any missed benefits. **WE RECOMMEND** that management of Personnel strongly consider following New York State Civil Service Law § 75 (3) and place individuals on leave without pay in lieu of paid administrative leave.

Paid administrative leave is an annual cost to the taxpayers of the County that is incurred without the benefit of policies and procedures mandating its necessity. **WE RECOMMEND** that management of Personnel develop and implement explicit policies and procedures for paid administrative leave. These procedures should include:

- Clear and concise definitions and guidelines, other than the sole guidance from the Department of Labor Relations, should be developed so that administrative leave cases can be easily identified, addressed accordingly, and consistently applied throughout the County.
- Identification of the circumstances in which the application of administrative leave is appropriate and cost effective.
- Implementation of controls to ensure that administrative leave is granted for purposes consistent with the stated intent of such leave.

AUDITOR'S COMMENT

SEPARATION PAYMENTS

“Separation” is defined as the end of an employment relationship. Upon separation, employees are entitled to either a *working notice* or *payment in lieu of notice* of up to five (5) days. A “working notice” requires an employee to work through the notice period, while “payment in lieu of notice” allows for the employee to receive full payment equal to the amount the employee would have been paid if they worked through the notice period, without accruing any leave benefits. Conversely, an employee who resigns, or voluntarily quits employment, is not entitled to a working notice or separation pay. An exception exists, which allows employees to resign rather than be discharged in misconduct-related cases and still receive separation payments.

During our audit, we noticed twenty-seven (27) individuals received separation payments for a total of \$19,461.77 (Appendix A). The employees were discharged for failure of probation or voluntarily resigned per the exception previously mentioned. Our examination revealed an inconsistency in the application and processing of these payments. Although the majority of individuals received separation payments equivalent to one-week pay, there were nine (9) that received less than forty (40) hours due to using their leave benefits at the time. This lack of consistency, coupled with the lack of guidance related to separation payments, allows for errors to occur without being noticed.

While we acknowledge Personnel's rationale behind the use of separation payments, there should be appropriate checks and balances in place. Therefore, in order to reduce separation payments, **WE RECOMMEND** that written policies and procedures be developed to provide reasonable assurance that such payments are authorized, processed, and properly reported. Furthermore, **WE RECOMMEND** that copies of related "separation reports" be placed as note attachments in the payroll software for all separated employees as support for these types of "other paid leave," unless constrained by confidentiality restrictions. All separation-related payments should be monitored and reviewed routinely by Personnel.

RESULTS OF EXIT CONFERENCE

An exit conference was held on January 30, 2018 with the Commissioner of Personnel, a member of his staff, and a representative from Budget and Management.

The draft of the audit report was reviewed and included a discussion of both the Audit Findings as well as the Auditor Comments. There was no objection to the content of the report and the auditee was in general agreement with the information it contained. We were provided with the department's written response to the audit report, which we have summarized and included as Appendix B.

The Erie County Comptroller's Office would like to thank the Commissioner and staff of the Department of Personnel for the courtesy and timely cooperation extended to us during the audit.

ERIE COUNTY COMPTROLLER'S OFFICE

Cc: Hon. Mark C. Poloncarz, County Executive
David A. Palmer, Commissioner of Personnel
Robert W. Keating, Director of Budget and Management
Erie County Fiscal Stability Authority

APPENDIX A

POSSIBLE REDUCTION OF COSTS TO ERIE COUNTY

As a result of our audit, the following table portrays the costs that Erie County has incurred through payment of wages and benefits to employees who have been separated or removed as well as payments to employees put on paid administrative leave and were subsequently terminated.

| <i>Possible Reduction of Costs to Erie County</i> | <i>Amount</i> |
|---|----------------------------|
| Employee Separation or Removal Payments | \$ 19,461.77 |
| Paid Administrative Leave To Terminated Employees | <u>37,614.43</u> |
| Total | <u><u>\$ 57,076.20</u></u> |

The inconsistent application and processing of these payments over the past eighteen (18) months is indicative that past practices create the potential for errors to occur, which is a direct cost to the County and its taxpayers.

APPENDIX B

SUMMARY OF PERSONNEL'S RESPONSE TO THE AUDIT REPORT

The Department of Personnel drafted a response to our audit report dated January 30, 2018. The following is a summarization of that response.

With respect to the Audit Report Opinion [*Page 3, Paragraph 2*], Personnel disagrees with the wording "except for the failure to specifically address the matter of "other paid leave" and "administrative leave." The department authorizes the use of such leave only after it has been approved by the Commissioner of Personnel.

With respect to Audit Finding I: Absence of Policies and Procedures [*Page 5, Paragraph 2*], Personnel views the use of the phrase "wide application" as misleading given that other paid leave constitutes less than half of a percent of the total County payroll.

- Regarding the wording "employees who were granted other paid leave continued to accrue leave benefits" in Audit Finding I: Absence of Policies and Procedures [*Page 5, Paragraph 3*], Personnel states that according to the individual Collective Bargaining Agreements (CBAs), accruals are granted as long as employees receive pay.
- Regarding the wording "Departments are not properly reporting other paid leave within their unit due to the lack of formalized policies and procedures" in Audit Finding I: Absence of Policies and Procedures [*Page 6, Paragraph 2*], Personnel states that although the ultimate approval of other paid leave lies with the Commissioner of Personnel, the department will develop a written policy codifying the use to the extent practicable.

With respect to Audit Finding II: Administrative Leave With Pay [*Page 7, Paragraph 2*], Personnel states that New York State Civil Service Law § 75 applies solely to unrepresented employees. The individual Collective Bargaining Agreements (CBAs) outline grievance arbitration procedures that require thorough investigations be performed by management prior to suspending employees without pay.

With respect to Auditor's Comments: Separation Payments [*Page 8, Paragraph 2*], Personnel states that other leave payments associated with separation and a notice period of five (5) days prior to termination are noted in individual employee payroll records. The fact that a separating employee may have already scheduled a paid day off, or a holiday falls within the five (5) day notice period does not change the notice period of five (5) days.

Personnel also stated that the department runs reports at the end of every pay period to specifically review time, pay, and leave. In addition, Personnel will memorialize practices with respect to other paid leave by creating written policies and procedures that will be communicated to departments and supervisors, as applicable.

With respect to Appendix A: Potential Reduction of Costs to Erie County [*Page 11*], Personnel views the title of the appendix is misleading, as costs of such leave are appropriate and do not anticipate any cost reduction to materialize when the written policies and procedures are memorialized.