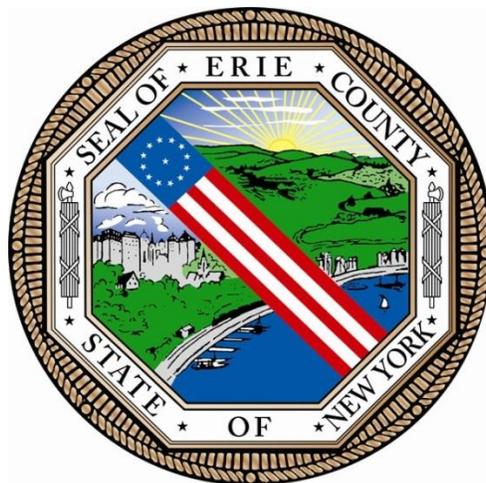


July 2021

**A Report on Managerial Confidential Overtime for Second
Quarter 2021**



**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**

July 7, 2021

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

Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on overtime expenses charged to funds 110, 252 and 253 in the second quarter of 2021, with particular focus on managerial confidential overtime.

Our objectives were to:

- Determine the amount of overtime expenses attributed to funds 110, 252 and 253.
- Determine which of these expenses were expended to managerial confidential (MC) employees.
- Compare these amounts to overtime expenditures in years past.

To accomplish these objectives, we reviewed expenses attributed to funds 110, 252 and 253.

This report serves as an update to previous reports regarding overtime expensed to fund 252. A meeting scheduled prior to the August, 2020 break to discuss overtime was postponed, with the intent to meet soon for the discussion. To date, this meeting has not yet been rescheduled. This updated information may be useful at such a discussion when it occurs.

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Background

On March 25, 2020, the United States Senate passed the “Coronavirus Aid, Relief and Economic Security Act” (CARES) as amended. The United States House of Representatives approved the measure on the following day, and the bill was signed into law on March 27, 2020.

The CARES Act provided significant aid to local governments to combat COVID-19. Erie County received \$160 million in federal funding. Erie County created a special fund to account for expenses permissibly reimbursed by CARES Act governmental funding. The fund is identified as fund 252. The money in fund 252 can be used for various purposes related to combatting COVID-19. These purposes include wages to individuals whose tasks are to substantially address COVID-19, outfitting offices and other areas to reduce potential exposure to COVID-19, fortifying capacity to work remotely to avoid exposure to COVID-19, and supplies and protective gear to guard against COVID-19, to name just a few permissible uses.

As stated, a permissible use of CARES Act funding is to pay employees whose efforts are substantially devoted to addressing COVID-19. As a result, some employees have been hired specifically for such tasks, while others have been authorized overtime for such tasks. The tasks needed to address COVID-19 are varied, and may be different from tasks typically undertaken by employees in their daily activities. At the time of passage, municipalities were required to spend the funds by December 31, 2020. In December, 2020, the deadline was extended so that funds that were determined to not be needed in 2020 must now be expended by December 31, 2021.

Subsequently, an additional COVID-related spending package named the American Rescue Plan Act of 2021 (ARPA) has been approved which will provide Erie County with an additional \$178 million. These funds can be spent on response to the COVID-19 emergency, compensating for lost revenue for governments as the result of COVID-19, and investments in water, sewer and broadband infrastructure. It specifically cannot be used to fund pensions or offset revenue decreases as the result of a tax cut since March 3, 2021. ARPA funds must be expended for costs incurred through December 31, 2024.

At the prompting of legislature questions and commentary, our office has previously submitted reports quantifying overtime and holiday worked pay expended to MC employees, overtime and holiday worked pay expended to employees represented by bargaining units, pay for employees who did not report to work and were unable to perform work remotely, the utilization of the imprest fund for expenditures charged to fund 252, and the use of fund 252 for food purchases for individuals quarantining due to COVID-19, as well as employees who report to work. Recommendations were made seeking clarifications to questions raised during the composition of those reports.

This report examines total overtime for employees expended from fund 110 (the general fund), fund 252 (COVID-19 response), and fund 253 (2021 COVID response). Overtime for the purposes of this report includes a range of categories, including overtime, holiday worked, call in pay, stadium pay and others. Further, this report examines payments made from January 22,

2021 through June 25, 2021. Paycheck 1 of 2021 included thirteen work days in 2020 and, as such, was included on a previous report.

First Quarter Overtime Expenditures

For purposes of comparison, below are the overtime expenditures for pay period two through pay period seven in 2021. As stated above, pay period one included thirteen days in 2020 and January 1, and has been included in a previous report regarding 2020.

Fund 110 is the county's general fund. Fund 252 and Fund 253 were created to account for expenditures made specifically for combatting COVID-19. As such, total overtime expenditures are included, as well as the breakdown between expenditures charged to Fund 110 and those charged to Fund 252 and 253.

Total (Funds 110, 252 & 253 – All employees): \$5,042,012 (128,691 hours for 2,273 employees)

Total (Fund 110 – All employees): \$4,206,418 (112,179 hours for 2,097 employees)

Total (Funds 252 & 253 – All employees): \$835,594 (16,512 hours for 176 employees)

First Half Overtime Expenditures

Below are the overtime expenditures for pay period two through pay period thirteen in 2021. As stated above, pay period one included thirteen days in 2020 and January 1, and has been included in a previous report regarding 2020.

Fund 110 is the county's general fund. Fund 252 and Fund 253 were created to account for expenditures made specifically for combatting COVID-19. As such, total overtime expenditures are included, as well as the breakdown between expenditures charged to Fund 110 and those charged to Fund 252 and 253.

Total (Funds 110, 252 & 253 – All employees): \$10,137,537 (265,157 hours)

This represents an expenditure of \$5,095,525 for pay periods eight through thirteen.

Total (Fund 110 – All employees): \$8,986,982 (241,738 hours)

This represents an expenditure of \$4,780,564 for pay periods eight through thirteen.

Total (Funds 252 & 253 – All employees): \$1,150,555 (23,419 hours)

This represents an expenditure of \$314,961 for pay periods eight through thirteen.

Managerial Confidential Overtime in First Quarter

For purposes of comparison, the amount of overtime expenditures paid to MC employees for pay periods two through seven are:

Total OT for MC Employees (Funds 110, 252 & 253): \$80,276 (15 employees; 787 hours)

Total OT for MC Employees (Funds 252 & 253): \$76,033 (13 employees; 730 hours)

Total OT for MC Employees (Fund 110): \$4,244 (4 employees; 88 hours)

Total OT for MC Sheriff Employees (Funds 110, 252 & 253): \$67,591 (13 employees; 811 hours)

Total OT for MC Sheriff Employees (Funds 252 & 253): \$18,839 (11 employees; 224 hours)

Total OT for MC Sheriff Employees (Fund 110): \$48,752 (12 employees; 587 hours)

Managerial Confidential Overtime in First Half

The amount of overtime expenditures paid to MC employees for pay periods two through thirteen are:

Total OT for MC Employees (Funds 110, 252 & 253): \$132,966 (20 employees; 1,323 hours)

This represents an expenditure of \$52,690 for pay periods eight through thirteen.

Total OT for MC Employees (Funds 252 & 253): \$124,468 (13 employees; 1,214 hours)

This represents an expenditure of \$48,435 for pay periods eight through thirteen.

Total OT for MC Employees (Fund 110): \$8,498 (9 employees; 109 hours)

This represents an expenditure of \$4,254 for pay periods eight through thirteen.

Total OT for MC Sheriff Employees (Funds 110, 252 & 253): \$145,531 (13 employees; 1,732 hours)

This represents an expenditure of \$77,940 for pay periods eight through thirteen.

Total OT for MC Sheriff Employees (Funds 252 & 253): \$18,839 (11 employees; 224 hours)

This represents an expenditure of \$0 for pay periods eight through thirteen.

Total OT for MC Sheriff Employees (Fund 110): \$126,692 (13 employees; 1,508 hours)

Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$77,940 (13 employees; 1,123 hours)

The amount of total overtime expenditures to MC employees ranged from \$0.85 to \$85,142. MC employees receiving greater than \$4,000 in overtime in First Half:

<u>Office</u>	<u>Title</u>	<u>Hours</u>	<u>Amount</u>	
Health	Commissioner of Health	574	\$85,142	
Sheriff	Undersheriff	314	\$30,997	(\$22,786 without Stadium Pay)
Sheriff	Chief of Administration	318	\$26,681	
Sheriff	Superintendent - Holding Center	227	\$20,491	(\$19,768 without Stadium Pay)
Emergency Services and Homeland Security	Deputy Commissioner - Preparedness	213	\$13,076	
Sheriff	Chief of Operations	183	\$12,534	(\$11,371 without Stadium Pay)
Sheriff	First Deputy Superintendent	155	\$12,418	(\$11,775 without Stadium Pay)
Emergency Services and Homeland Security	Deputy Commissioner	176	\$10,217	
Sheriff	First Deputy Superintendent	111	\$9,713	(\$7,915 without Stadium Pay)
Sheriff	Chief Deputy Sheriff	87	\$7,271	(\$1,509 without Stadium Pay)
Sheriff	Chief of Special Services	87	\$7,256	(\$2,877 without Stadium Pay)
Sheriff	Chief Deputy - Civil	91	\$6,928	(\$1,556 without Stadium Pay)
Sheriff	First Deputy Superintendent	79	\$6,629	(\$5,246 without Stadium Pay)
Emergency Services and Homeland Security	Special Assistant	120	\$5,496	
Public Works	Commissioner of Public Works	46	\$4,947	
Emergency Services and Homeland Security	Commissioner of Emergency Services	55	\$4,547	
Emergency Services and Homeland Security	Deputy Fire Coordinator	73	\$4,119	

Managerial Confidential Compensatory Time Policy Change

As stated in a previous report a new policy regarding compensatory time was instituted on January 8, 2021. Prior to January 8, 2020, MC employees could earn compensatory time at a rate of time-and-a-half for hours worked in excess for 40 hours per week. The amount of compensatory time that could be banked was capped at 80 hours. The new policy increases that cap to 200 hours. After the 200-hour cap is reached, MC employees will then earn paid overtime for hours worked in excess of 40 per week.

However, if at the end of the year the employee has compensatory time banked in excess of 80 hours, the employee will be paid for those hours to bring the bank down to 80 hours.

As such, the new policy prevented MC employees from earning paid overtime this year until they reached the 200-hour cap. At the end of the year, it is possible that the compensatory banks will be paid out to bring MC employees back down to 80 hours. For many MC employees, the policy creates a de facto deferred compensation mechanism in which the employees will be paid three weeks salary at the end of the year for overtime worked previously. As such, overtime paid to MC employees as a percentage of total overtime cannot be accurately calculated until the end of the year after these payments are made.

However, it can be calculated how much excess compensatory time will result in an expenditure if the employee does not utilize the time as paid leave. For example, below are listed the top five MC employee overtime expenditures, along with a calculation of a potential year-end pay out. Accumulated vacation time (in hours) is included to assist with predicting if a pay out is likely for budgetary purposes, because employees can only carry over a certain amount of vacation time, or else risk losing the time without compensation.

<u>Office</u>	<u>Title</u>	<u>Rate/Hour</u>	<u>Potential Payout</u>	<u>Vacation Bank</u>
Health	Commissioner of Health	\$99	\$11,872	428
Sheriff	Undersheriff	\$66	\$7,891	638
Sheriff	Chief of Administration	\$56	\$6,705	619
Sheriff	Superintendent - Holding Center	\$60	\$7,227	391
Emergency Services and Homeland Security	Deputy Commissioner - Preparedness	\$41	\$4,915	393

For each of the employees mentioned as part of this example, the 200-hour compensatory time cap was reached in the first quarter of the year. Each also remains at the 200-hour compensatory time cap. If this excess compensatory time is not utilized, it can be added to the amount of overtime earned for the year for purposes of determining overtime for expended for hours claimed for compensation.

Conclusions

In the first half, \$10,137,537 was expended for overtime from Fund 110, Fund 252 and Fund 253 for all Erie County employees. Of this, \$1,150,555 was expended from the COVID-19 relief funds (Fund 252 and Fund 253). Of this, \$124,468 was expended for MC employees.

Due to a policy change regarding compensatory time for MC employees, the numbers reported for overtime expenditures may be adjusted at the end of the year, after compensatory time payments are made. For example, if just the five highest MC employees for whom overtime was expended end the year with 200 hours in their respective compensatory time banks, this will result in an additional \$38,610 in expenditures.

MC employees may be performing tasks while earning overtime that could more efficiently or more economically be performed by employees from represented bargaining units. WE RECOMMEND that departments exercise care to ensure that tasks are being performed in the most cost-effective manner possible.