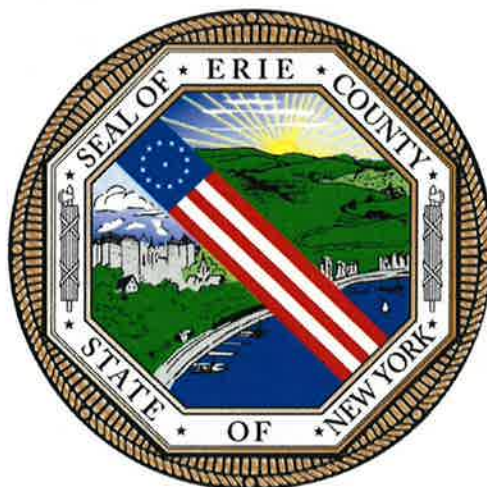


November 2021

**A Report on Managerial Confidential Overtime through the
Third Quarter 2021**



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November 12, 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 October 1, 2021. Paycheck 1 of 2021 included thirteen work days in 2020 and, as such, was included on a previous report.

Overtime Expenditures through Three Quarters

Below are the overtime expenditures for pay period two through pay period twenty 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): \$16,183,793 (345,950 hours)

Total (Fund 110 – All employees): \$14,724,051 (315,518 hours)

Total (Funds 252 & 253 – All employees): \$1,459,741 (30,433 hours)

Managerial Confidential Overtime through Three Quarters

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

Total OT for MC Employees (Funds 110, 252 & 253): \$139,086 (1,339 hours)

Total OT for MC Employees (Funds 252 & 253): \$123,458 (1,145 hours)

Total OT for MC Employees (Fund 110): \$15,628 (194 hours)

Total OT for MC Sheriff Employees (Funds 110, 252 & 253): \$328,302 (4,161 hours)

Total OT for MC Sheriff Employees (Funds 252 & 253): \$13,373 (162 hours)

Total OT for MC Sheriff Employees (Fund 110): \$314,929 (4,000 hours)

Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$245,044 (3,116 hours)

The amount of total overtime expenditures to MC employees ranged from \$0.85 to \$86,848. The following lists MC employees receiving greater than \$20,000 in overtime through three quarters:

| <u>Office</u> | <u>Title</u> | <u>Hours</u> | <u>Amount</u> |
|---------------|--|--------------|---------------|
| Health | Commissioner of Health | 585 | \$86,848 |
| Sheriff | First Deputy Superintendent - Compliance | 719 | \$52,796 |
| Sheriff | Undersheriff | 528 | \$52,081 |
| Sheriff | Chief of Administration | 561 | \$47,005 |
| Sheriff | Superintendent | 349 | \$31,557 |
| Sheriff | Chief of Operations | 455 | \$28,812 |
| Sheriff | First Deputy Superintendent | 295 | \$23,691 |
| Sheriff | Chief of Operations | 329 | \$22,484 |
| Sheriff | Chief of Technology | 247 | \$20,667 |

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.

Conclusions

Through the first three quarters of 2021, \$16,183,793 was expended for overtime from Fund 110, Fund 252 and Fund 253 for all Erie County employees. Of this, \$1,459,741 was expended from the COVID-19 relief funds (Fund 252 and Fund 253). Of this, \$136,831 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.

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.