



DEC 15 '23 12:44

ERIE COUNTY COMPTROLLER
KEVIN R. HARDWICK

December 15, 2023

Honorable Members
Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, New York 14202

Immediate Consideration Requested

Re: Overtime Compensation for Sheriff Exempt Managerial Confidential Employees

Dear Honorable Members:

As you know, overtime and compensatory time compensation for County managerial confidential employees designated as exempt under the federal Fair Labor Standards Act (FLSA) was eliminated with the passage of 2023 Budget Resolution #99. Furthermore, all the employees designated as FLSA exempt in that resolution received pay upgrades in the 2023 Budget with significant salary increases (separate from cost-of-living adjustments) for which I previously advocated.

At the same time, Sheriff FLSA exempt employees covered by Budget Resolution 99 received one-to-two job group upgrades and have a higher pay scale than other County managerial confidential employees. This was done in reflection of the work they perform and the elimination of overtime and compensatory time. I believed these raises were warranted and well deserved, given the seriousness of the jobs they do. As we all know, the Sheriff's Office is a 24/7 operation that provides a tremendous public service in Erie County.

Recently, however, an issue has arisen regarding whether holiday worked pay is the same as overtime. My assumption was that overtime is overtime and the 2023 budget resolution prohibited it. The Sheriff has a different view. According to the County's accounting system, through December 1, 2023, FLSA exempt employees in the Sheriff's Office have still been receiving overtime pay through the "Holiday Worked 1.5x" wage type.

I understand the confusion surrounding the many different categories of compensation the County offers and met recently with the Sheriff to discuss the issue. Our meeting occurred a few days after The Commissioner of Personnel issued a revised policy for managerial confidential employees titled "Time and Attendance Policy for FLSA Exempt Employees" (attached) that bars covered employees from receiving any overtime other than that provided at Highmark Stadium and KeyBank Arena which is fully reimbursed by the Buffalo Bills/Buffalo Sabres and coded as "Stadium Pay" or "Arena Pay". This policy will ostensibly preclude the

future provision of Holiday Worked overtime pay and any additional pay category to these FLSA employees.

Although the Sheriff and I disagree on the interpretation of the budget resolution relative to Holiday Pay worked, we would both feel more comfortable if the clarification would come from the Legislature. Accordingly, I am asking you to clarify this matter in a resolution so that it is unquestionable in the years to come. Given schedule constraints and timing, we are requesting immediate consideration to ensure that the upcoming holidays are included in such a rule. My staff and I are available for any questions or concerns you may have and welcome the chance to discuss this matter at your work session on December 21, 2023 if you desire.

Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. R. Hardwick".

Kevin R. Hardwick, Ph.D.
Erie County Comptroller

cc: Dr. Brian Bray, Commissioner of Personnel
Robert W. Keating, Director of Budget and Management
Erie County Sheriff John Garcia

MEMORANDUM

To: Erie County Legislature
Fr: Erie County Comptroller's Office
Date: December 15, 2023
Re: Overtime Compensation for Sheriff Exempt Managerial Confidential Employees

SUMMARY OF RECOMMENDED ACTION/BACKGROUND

It is recommended that the Erie County Legislature clarify 2023 Budget Resolution #99 prohibiting additional cash compensation (overtime, holiday worked 1.5x, or other cash overtime) to managerial-confidential employees of the Erie County Sheriff's Office and all Fair Labor Standards Act (FLSA) exempt employees in the County.

This policy would not prohibit overtime payments for Sheriff managerial confidential employees in the form of the Stadium Pay or Arena Pay wage types when those employees' overtime is **fully reimbursed** to the County by the Buffalo Bills/Buffalo Sabres or their business entities.

FISCAL IMPLICATIONS

Approval of this resolution and the prohibition of holiday worked overtime pay for Sheriff managerial confidential employees will save the County tens of thousands of dollars annually.

REASONS FOR RECOMMENDATION

Overtime compensation for County managerial confidential employees designated as exempt under the federal Fair Labor Standards Act (FLSA) is prohibited under 2023 Budget Resolution #99 adopted by the Erie County Legislature on December 1, 2022. That resolution identified the managerial confidential titles in the County workforce, including Sheriff employees, who are classified as exempt, salaried employees under the Fair Labor Standards Act. In exchange for losing overtime or compensatory time, County managerial confidential employees received wage increases in 2023.

However, throughout 2023, Sheriff managerial confidential employees have also been receiving cash overtime through the Holiday Worked 1.5x wage type and have been paid for working on County observed holidays ranging from New Years' Day to Thanksgiving.

It is our belief this form of overtime, like the other wage types such as Overtime 1.5x, was intended to be prohibited by 2023 Budget Resolution 99, but the Holiday Worked 1.5x wage type was not specifically stated in the resolution. Sheriff managerial confidential employees have been putting in for and receiving cash overtime at the rate of time and a half on observed County holidays.

To address this discrepancy and clarify the intentions of Budget Resolution 99, the Commissioner of Personnel issued a memorandum on December 12, 2023 updating the County's Time and Attendance Policy for FLSA Exempt Employees that prohibits "premium overtime, straight overtime, or compensatory time for (FLSA exempt employees) working during a weekend, holiday, or an emergency or disaster."

However, after consultations with the Sheriff and the County Administration, it is recommended that your Honorable Body adopt a resolution expressly barring any form of overtime for the Sheriff's FLSA exempt employees other than that earned for working on the Highmark Stadium and KeyBank Center which is fully reimbursed by the professional sports teams or their business entities that occupy the facilities and pay the County for security services.

CONSEQUENCES OF NEGATIVE ACTION

Erie County will continue to pay Sheriff appointees overtime at a cost of tens of thousands of dollars annually.

STEPS FOLLOWING APPROVAL

The Department of Personnel will coordinate with the Sheriff's Office to bar Sheriff managerial confidential employees from receiving the Holiday Worked 1.5x overtime and prohibit such entries separate from Stadium Pay and Arena Pay in the SAP system.

**A RESOLUTION SUBMITTED BY
THE COMPTROLLER**

WHEREAS, overtime compensation for County managerial confidential employees designated as exempt under the federal Fair Labor Standards Act (FLSA) is prohibited under 2023 Budget Resolution #99 adopted by the Erie County Legislature on December 1, 2022; and

WHEREAS, that resolution identified the managerial confidential titles in the County workforce, including Sheriff employees, who are classified as exempt, salaried employees under the Fair Labor Standards Act; and

WHEREAS, in exchange for losing overtime or compensatory time, County managerial confidential employees received significant and commensurate wage increases in 2023; and

WHEREAS, throughout 2023, Sheriff Office managerial confidential employees have been receiving cash overtime through the Holiday Worked 1.5x wage type and have been paid for working on County observed holidays ranging from New Years Day to Thanksgiving, which was intended to be barred by Budget Resolution 99; and

WHEREAS, the Commissioner of Personnel issued a memorandum on December 12, 2023, updating the County's Time and Attendance Policy for FLSA Exempt Employees that prohibits "premium overtime, straight overtime, or compensatory time for (FLSA exempt employees) working during a weekend, holiday, or an emergency or disaster"; and

WHEREAS, to clarify the policy, it is recommended that the Erie County Legislature codify and expressly state the policy prohibiting overtime.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby prohibits all covered Fair Labor Standards Act-exempt County employees, including those in the Sheriff's Office, from receiving any form of overtime, including, but not limited to Holiday Worked pay, effective upon the passage of this resolution; and be it further

RESOLVED, that this resolution does not impede the ability of County managerial confidential employees from receiving overtime under the Stadium Pay or Arena Pay wage types when working at Highmark Stadium or KeyBank Center during events in which those employees' overtime is wholly reimbursed to the County by the Buffalo Bills or Buffalo Sabres or their business entities; and be it further

RESOLVED, that certified copies of this resolution be transmitted to the County Executive, County Attorney, Director of Budget and Management, Commissioner of Personnel, the Sheriff, and the Office of the Comptroller.

Fiscal Impact: Positive to the County through lower overtime expense.

MANAGERIAL/CONFIDENTIAL POLICY

SUBJECT: TIME AND ATTENDANCE POLICY FOR FLSA EXEMPT EMPLOYEES

EFFECTIVE DATE: JANUARY 1, 2023

RESIVED DATE: DECEMBER 8, 2023 (Changes Underlined)

PURPOSE

The purpose of this policy is to direct salaried exempt employees on how they must track their time and attendance. The purpose of the time and attendance program for salaried employees is to allow the Personnel Department to track the use of accrued paid leave and to ensure that salaried employees receive appropriate service credit in the New York State & Local Retirement System.

POLICY

Salaried exempt employees are employees whom the County Legislature has made exempt from the FLSA minimum wage and overtime provisions based on the duties performed and the manner of compensation. Exempt employees are paid an established salary and are expected to fulfill the duties of their positions regardless of the number of hours worked and the time at which work was performed. They do not receive premium overtime, straight overtime, or compensatory time for working more than 40 hours in a work week or working during a weekend, holiday, or an emergency or disaster. The only pay in addition to salary an employee may receive is as part of an agreement to provide services at Highmark Stadium or KeyBank Center and in which Erie County is being completely reimbursed for the salary expenses.

Salaried exempt employees who work any time during a work period or use accrued time benefits are entitled to their full base pay. However, exempt employees will not be paid for any week in which they did not work nor use accrued paid leave.

Salaried exempt employees do not use the SwipeCard System and do not record their time at the commencement and conclusion of the workday. Salaried exempt employees will report their time work to the Personnel Department on an Exempt Employee Time and Attendance Tracking Form.

Erie County has an eight-hour standard workday. Erie County expects its salaried exempt employees to work five days each week. Workdays for salaried exempt employees may include special and regular meetings and events outside of normal hours and away from County premises. Work performed at home (i.e., the employee's domicile) entirely outside of traditional weekday business hours (i.e., 7 AM – 5 PM) shall not be considered part of the standard workday unless pre-approved by the Commissioner of Personnel.

ACCRUALS

1. Salaried exempt employees will accrue vacation, sick, and personal time at the same rate as hourly managerial confidential employees.
2. Employees may use their accrued vacation, sick, or personal time or other time banks in quarter-day increments (i.e., two hours). (Salaried exempt employees should round to the closest quarter-day increment when they determine how much accrued time he or she must use. For example, if an employee works 6.5 hours and then leaves for a medical appointment, he or she should record as being present a partial day and use a quarter-day sick leave. However, if the employee works 7.5 hours and then leaves for a medical appointment, he or she does can record him- or herself as present the entire day.)
3. Employees who do not work five full days in a week can use their accrued vacation, sick, or personal time to reach the full five days.
4. Any salaried exempt employee who works (or uses accruals in lieu of working) fewer than five days per week shall not accrue any vacation or sick time.
5. When an employee is absent for a full week (i.e., performs no work) and does not have sick (regular or catastrophic), personal, or vacation leave, the Personnel Department will make the proper payroll deduction (dock).

PAYROLL DEDUCTIONS

Erie County shall make a proper payroll deduction for any of the below circumstances if the employee does not have sufficient accruals:

1. The employee is absent due to a disciplinary suspension.
2. The absences occurred in the initial or terminal week of employment.
3. The employee is on unpaid leave under the Family and Medical Leave Act.

EXEMPT EMPLOYEE TIME AND ATTENDANCE TRACKING FORM

Salaried Exempt Employees must complete an Exempt Employee Time and Attendance Tracking Form every pay period and return it to the Personnel Department before noon on the Tuesday following the end of the pay period. Failure to submit a tracking form may result in not receiving full service credit with the New York State Retirement System and forfeits the employee's ability to accrue vacation and sick time for that pay period.

TYPE OF DAY

The employee must select if each day in the pay period is a Day Off, Present Entire Day, Present Partial Day, or Absent.

- Day Off: The employee did not work that day and was not expected to work that day. Employee may alter their Day Off as needed to complete their job responsibilities that week.
- Present (Entire Day): The employee worked a full day.
- Present (Partial Day): The employee worked less than a full day.

- Absent: The employee did not work at all that day and is using accruals in lieu of working that day.

If an employee worked a partial day or was absent, the employee must select the time bank (e.g., vacation, sick, etc.) or leave type (paid or unpaid) for the portion of the day they did not work.

Employees may apply time worked in excess of eight hours from a day they recorded as present for an entire day onto a day they would otherwise be present for a partial day. For example, an employee who works ten hours on Monday and six hours on Tuesday is permitted to record him- or herself as present the entire day for both days.

ABSENCE TYPES

1. Accrued Time: Salaried employees earn accrued leave at the same rate as non-salaried employees. An employee can use these time banks by increments of 25 percent of a day – which is equivalent to two hours.
2. Leave Type: If an employee works less than five full days or does not use an accrual bank for an amount equal to five days, the employee must designate if the difference is paid or unpaid leave. Under no condition will an employee be paid for more than five days in a week. The employee may not receive time in their accrual bank or receive full service credit with the New York State Retirement System when using either leave type.
 - a. Paid – An employee will receive their full pay even though he or she did not work a full day or use accruals. Must be approved by either the employee's Department Head or the Personnel Department.
 - b. Unpaid - An employee will be docked pay for their absence.