

# **A Report on 4<sup>th</sup> Quarter 2021 Managerial Confidential Employee Overtime and Related Issues**

## **Introduction**

Overtime pay for the County's Managerial Confidential (MC) employees has been a subject of interest to county legislators, the media and the public since 2020. The purpose of this report is to update the Erie County Legislature and the public on the impact of MC overtime on the county budget by reporting selected data for the 4<sup>th</sup> quarter of 2021.

## **A Brief History of MC Overtime Policy**

For years Managerial Confidential employees were not eligible for cash overtime. MC employees are typically department heads and other high-ranking employees who are exempt from civil service requirements for hiring and termination. They are not members of a public employee union. Instead of overtime, MC employees were permitted to receive compensatory time (comp time). This allows them to get paid for future time off for working beyond their normal work schedule. The rules permitted them to accumulate one and one-half hours of compensatory time for each extra hour worked. The amount of comp time they were allowed to accumulate was capped, however, at 80 hours. MC employees also qualified for benefits available to union employees such as vacation buyouts and unused sick time bonuses.

An exception for cash overtime for MC employees was made in 2006 as a result of the October Storm that impacted the City of Buffalo and several towns and villages. During this crisis, County Executive Joel Giambra proposed allowing MC employees to collect cash overtime during declared states of emergency, rather than merely accruing comp time. The County Legislature passed a resolution to this effect.

This October, 2006 MC overtime policy was in effect in March of 2020 when County Executive Mark Poloncarz declared a countywide state of emergency in response to the COVID pandemic. As the state of emergency continued, several MC employees began to accumulate significant amounts of cash overtime, a development not lost on county legislators, the Comptroller's Office, the media and the public.

In an attempt to limit cash overtime to MC employees, the County Executive promulgated a new policy in 2021. It permits MC employees to accumulate up to 200 hours of compensatory time for hours worked beyond 40 hours per week. Once those employees reach the 200-hour threshold, they are paid cash overtime. Furthermore, at the end of the year MC employees receive a cash-out of any comp time in their time banks over 80 hours. The policy also ended the practice of "rewarding" these MC employees a \$500 unused sick time bonus. The County Executive's stated rationale for the new policy was to simultaneously reduce the amount of cash overtime paid to MC employees in a calendar year and comply with the federal Fair Labor Standards Act (FLSA). This latter point was due to the fact that MC employees are still subject to the county's time recording requirements and only get paid for actual hours worked.

Thus, they are considered hourly, rather than salaried, employees and subject to provisions of the FLSA considering overtime pay.

#### 4<sup>th</sup> Quarter Data for 2021

Over \$200,000 in overtime and holiday worked pay was paid to MC employees during the fourth quarter of 2021. Table 1 displays information for the top ten MC earners of extra pay with separate columns for overtime and holiday worked pay. It is noteworthy that eight of the ten are Sheriff's Office employees. One reason for this may be that a significant amount of some (but not all) individuals' overtime was derived from "stadium pay" on Bills' game days.

It should also be noted that Health Commissioner Gale Burstein's name is not on the list. Dr. Burstein's overtime has been the focus of several previous reports. During the fourth quarter of 2021, however, she earned only \$139.89 in overtime and received no additional pay for working holidays. She did earn a total of \$84,589 for the entire year in overtime and an additional \$5,809 for holidays worked. Her 2021 overtime was the 10<sup>th</sup> highest among all County employees.

Table 1  
Overtime and Holiday Pay for Selected Erie County Managerial Confidential Employees  
for 4<sup>th</sup> Quarter<sup>1</sup> of 2021

Employee	Dept./ Office	OT Pay	Holiday Pay	Total OT & Holiday pay
Scott Patronik	Sheriff	\$27,533	\$ 503	\$28,036
John Greenan	Sheriff	\$23,994	\$2,269	\$26,263
Jeffrey Hartman	Sheriff	\$17,267	\$2,120	\$19,387
Denise Manfredo	Sheriff	\$16,134	\$2,577	\$18,711
Philip Kuppel	Sheriff	\$18,044		\$18,044
Christine Green	Sheriff	\$15,609		\$15,609
Scott Zylka	Sheriff	\$ 6,638	\$ 170	\$ 6,808
Gregory Gill	Health	\$ 5,530	\$ 492	\$ 6,022
Daniel Neaverth, Jr.	Homeland Sec./ Emerg. Svces.	\$ 2,782	\$ 658	\$ 3,440
Thomas Diina	Sheriff	\$ 2,349	\$ 723	\$ 3,072

<sup>1</sup>Since the pay period for the October 15 paycheck covered the period September 25 – October 8, data in the table cover the period from September 25 through December 31, 2021.

The impact of the compensatory time buyout aspect of the new policy is illustrated in Table 2, which displays the hours paid out and pay amount received by the 20 MC employees who received \$5,000 or more from the 2021 buyout. Keep in mind that after the cash out of comp time, employees still had comp time balances of 80 hours remaining. Total County expenditures for the comp buyout program exceeded \$200,000 for 2021.

Table 2  
2021 Compensatory Time Buyout  
for Selected Erie County Managerial Confidential Employees

<u>Employee</u>	<u>Dept./ Office</u>	<u>Hours</u>	<u>Amount</u>
Gale Burstein	Health	120	\$12,165
John Greenan	Sheriff	132.75	\$ 8,730
Michelle Olszowy	Probation	120	\$ 7,369
Scott Kroll	Comptroller	119.99	\$ 7,052
Timothy Hogues	Personnel	117.49	\$ 7,015
Denise Manfredo	Sheriff	123	\$ 6,873
Scott Patronik	Sheriff	120	\$ 6,705
Philip Kuppel	Sheriff	123	\$ 6,591
Daniel Neaverth, Jr.	Homeland Sec./ Emerg. Svces.	120	\$ 6,585
Karen McCarthy	County Clerk	120	\$ 6,577
Timothy Elling	DPW	133.6	\$ 6,371
Joseph Abdulla	Health	127.45	\$ 6,312
William Geary, Jr.	DPW	82.81	\$ 6,127
Paul Kubala	Youth Svces.	120.82	\$ 6,050
Thomas Diina	Sheriff	100	\$ 6,022
Mary Brockmyre	Social Svces.	100.65	\$ 5,649
Christine Green	Sheriff	123	\$ 5,608
Jeffrey Hartman	Sheriff	123	\$ 5,608
Robin Sion	Board of Elections	113.97	\$ 5,222
Gregory Butcher	Homeland Sec./ Emerg. Svces.	120	\$ 5,031

### Discussion

The county's new policy concerning MC overtime was an attempt to manage expenses while complying with provisions of the Fair Labor Standards Act. It was adopted in the middle of the COVID pandemic when policymakers were focused on a myriad of other problems related to the health and welfare of county residents. Now that the effects of the pandemic appear to be lessening, it might be appropriate to review the policy's effectiveness. This is especially

important because the new policy is not limited to only those times when there is a declared state of emergency in Erie County.

Policymakers might conclude that given the requirement to comply with the FLSA, it makes sense to continue the new policy in which the County pays MC employees cash overtime after they accumulate 200 hours of comp time and to pay them at the end of the year for comp time accumulated in excess of 80 hours. Alternatively, the County could consider treating MC employees as true salaried employees, just like elected officials, by not requiring their strict accounting of hourly worked time.

In such a case, MC employees would no longer be required to swipe in and out of work and they would not be eligible to earn comp time or overtime. This would mean that the FLSA would no longer consider them hourly employees and most would no longer be subject to the Act's overtime requirements.<sup>2</sup> This would save the County a significant sum of money. A portion of the money currently devoted to overtime could even be utilized for higher MC salaries and the county could still come out ahead financially.

A drawback to making MC employees salaried is that they could be free to work less than 40 hours a week. They could always, however, be terminated for any reason if their performance is not satisfactory.

There are other practical considerations that could impact the process. The County's pay scales for MC employees are considered significantly lower than similar roles in the private sector and are lower than the CSEA union pay scale for the same job groups. Changes to eliminate comp time or overtime could lead to difficulties in recruitment or retention for certain MC positions.

The County could also consider a hybrid model where some MC employees are changed to salaried and others remain hourly. Regardless, the current policy should be reviewed and either affirmed or amended.

<sup>2</sup>The exception would be employees making under \$48,750 per year, as the FLSA still requires such salaried workers to be paid overtime after they work more than 40 hours in any given week.