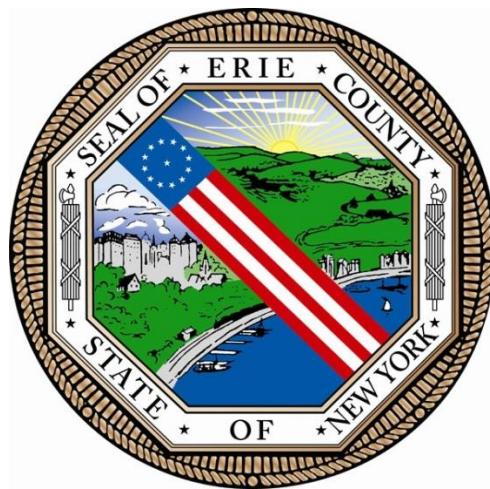**August 2020**

A Report on the Use of "Unutilized" and "Emergency Closing" Pay Codes to Enforce Social Distancing Mandates

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Erie County Legislature
92 Franklin Street 4th Floor
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Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on the use of "unutilized" and "emergency closing" pay codes in an attempt to comply with social distancing mandates to combat COVID-19.

Our objectives were to:

- Quantify the amount of expenses attributed to "unutilized" pay.
- Quantify the amount of expenses attributed to "emergency closing" pay.
- Break down and present the expenses to provide multiple useful information points.

To accomplish these objectives, we examined expenses for "unutilized" and "emergency closing" pay codes used from March 28, 2020 to the present.

Legislators and other elected officials have commented regarding people receiving pay for not coming into work and not performing work while not physically in their typical work location. This report seeks to quantify the amount paid for work not being accomplished, as well as to determine which employees were the beneficiaries of such pay. This information may be useful in the legislature's ongoing discussions regarding expenses resulting from actions taken in response to COVID-19.

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Background

On March 17, 2020, in an effort to slow the spread of COVID-19 and in response to the Governor's order to reduce exposure to COVID-19, Erie County implemented a policy which allowed non-essential employees to work from home, if possible. Such a policy facilitated the implementation of social distancing measures.

Certain essential employees were not in a position to be able to work from home. Other employees reported to the office on an as needed basis, while completing other work assignments from a remote location. Some employees, who were not essential and who were unable to complete assignments from a remote location, remained paid using the "unutilized" or "emergency closing" pay codes.

Initially, employees who were unable to conduct work remotely used the code "emergency closing" to log their time for payroll purposes. However, it was determined that "emergency closing" was not appropriate, because that code was traditionally used when locations were physically closed and services were not offered. Instead, a time code called "Unutilized" was created. This code was to be used by employees who were directed to remain at home, but were unutilized because they did not have work or were unable to complete work at home. The code was to be used beginning on April 11, 2020.

The differences between "unutilized" and "emergency closing" go beyond the determination of whether an office if actually opened and accessible to employees. Individuals who logged time using the code "unutilized" would not count toward the 40 hours per pay period required to earn vacation or sick time. Individuals logging time using the "emergency closing" time code would continue to earn vacation and sick time, even if the amount used exceeded 40 hours in a time period.

The use of the "unutilized" time code was discontinued as of July 4, 2020. The "emergency closing" time remains available, as it has pre-dating COVID-19 social distancing measures.

Unutilized Time Code Summary

"Unutilized" as a time code was available for a total of six time periods. Two individuals used the time code in a seventh period. In total, 942 employees used the time code on one or more occasions. The use of this time code was applied to 107,869 hours of time logged. The total amount paid to employees using this time code was $2,374,413.

The chart below depicts "unutilized" time usage:

Work Period	Number	Hours	Amount	New
4/11/2020 - 4/24/2020	861	32,655	713,064	861
4/25/20 - 5/8/2020	718	27,632	602,871	38
5/9/2020 - 5/22/2020	665	25,206	550,783	15
5/23/2020 - 6/5/2020	437	12,600	282,112	19
6/6/2020 - 6/19/2020	235	6,706	153,051	6
6/20/2020 - 7/3/2020	175	3,050	72,157	3
7/4/2020 - 7/17/2020	3	24	376	0

The amount of unutilized time, measured by the number of people utilizing the time code, the number of hours logged, and the total amount paid, decreased each pay period that the code was in use.

Unutilized Time Code by Department

The amount of "unutilized" time logged varied by department. The following chart lists the number of employees from each department utilizing the time code, the total number of hours used by those employees, and the total amount paid to those employees for the use of the time code:

Department	Employees	Hours	Amount
Social Services	283	27,520	578,262
Public Works	173	18,190	384,276
Sewerage Management	144	17,808	395,558
Clerk	61	7,490	144,192
Board of Elections	58	8,984	187,707
Probation	46	7,689	163,816
District Attorney	30	5,660	140,960
Senior Services	24	1,670	33,010
Law	21	2,425	93,903
Mental Health	19	2,294	63,462
Health	14	362	7,226
Environment & Planning	13	1,743	50,496
Public Advocacy	12	672	15,537
Sheriff	9	846	15,971
Real Property Tax Services	5	1,291	26,050
Personnel	4	484	10,612
Central Police Services	4	268	7,934
Veterans' Services	3	528	12,392
Legislature	3	404	8,422
Information & Support Services	3	320	8,080

Purchasing	3	279	4,609
Comptroller	2	320	7,352
Equal Employment Opportunity	2	232	5,423
County Executive	2	24	627
Parks	2	26	464
Labor Relations	1	238	5,288
Emergency Services	1	104	2,783

As stated above, employees were not permitted to log more than 40 hours of "unutilized" time in a pay period and accrue vacation and sick time. A total of 1,026 paystubs indicated the logging of exactly 40 hours of "unutilized" time. 517 paystubs indicated "unutilized" time greater than 40 hours, up to 80 hours. This chart indicates the number of paystubs reflecting the number of hours paid for "unutilized" time:

Paystubs with "Unutilized" Time Paid
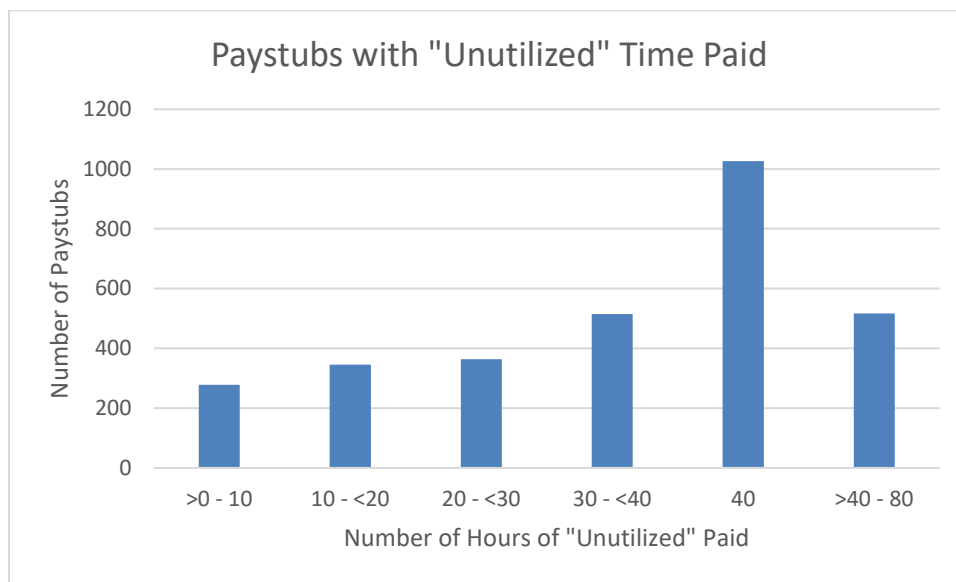
Unutilized Time Code Use by Managerial Confidential Employees

The majority of employees logging time using the "unutilized" code were represented by bargaining units. However, 35 managerial confidential (MC) employees also logged time using the "unutilized" time code. These 35 individuals totaled 3,239 unutilized hours, receiving $114,991.

A breakdown of the number of MC employees paid hours using the "unutilized" time by department is as follows:

Department	Employees	Hours	Amount
Law	15	1,637	$74,917
Clerk	6	681	$17,544
District Attorney	4	88	$2,729
Legislature	3	404	$8,422
County Executive	2	24	$627
Labor Relations	1	238	$5,288
Sewerage Management	1	101	$2,630
Board of Elections	1	53	$2,349
Personnel	1	12	$430
DPW	1	2	$55

Of the 15 MC employees in the County Attorney's Office logging time as "unutilized," 13 of the employees have titles indicating that they are attorneys.

This list includes the County Attorney, who is the head of the department. The County Attorney is not the only division head to receive "unutilized" payments. The Medicaid Inspector General, who heads the Medicaid Inspector General Division that was created in conjunction with the Commissioner of Social Services and the County Attorney to combat Medicaid fraud, also received "unutilized" payments in four separate pay periods, totaling 68 hours. Unlike the County Attorney, the Medicaid Inspector General is a bargaining unit represented position.

Recipients of Unutilized and Overtime

Previously, we reported to the legislature the amount of overtime expenses charged to fund 252, also known as federal CARES Act funding. We reported that as of July 10, 2020, $3.2 million was charged to fund 252 in overtime expenses, along with nearly $165,000 paid at an increased rate for holidays worked. The total amount of overtime paid has increased since that report. Of the individuals receiving overtime payments, 38 employees also received payments for "unutilized" time. By department, the number of employees receiving both overtime and "unutilized" payments is as follows:

Department	Number of Employees
DPW	8
Senior Services	8
Social Services	8
Law	3
County Executive	2
Health	2

Mental Health	2
Sewerage Management	2
Central Police Services	1
Clerk	1
Environment & Planning	1

Ten of these employees received overtime and "unutilized" payments in the same pay period. One of these employees, from the Health Department, received overtime and "unutilized" payments in the same pay period on two separate occasions. Another of these employees, from the Office of the Medicaid Inspector General (Law), received overtime and "unutilized" payments in the same pay period on three separate occasions. The departments with employees receiving overtime and "unutilized" payments in the same time period were: County Executive; Health; Law (including the Medicaid Inspector General) (2); Mental Health; Public Works; Senior Services (2); Sewerage Management; and Social Services.

Emergency Closing Time Code Summary

As stated above, some employees who were unable to work remotely and who did not come to work used the "emergency closing" code to record time. This occurred prior to the creation of the "unutilized" time code for COVID-19 purposes.

By week, "emergency closing" time code was:

Work Period	Number	Hours	Amount	New
3/28/2020 - 4/10/2020	2320	93,976	$2,095,193	2320
4/11/20 - 4/24/2020	781	29,521	$518,273	13
4/25/20 - 5/8/2020	323	15,813	$320,095	0
5/9/2020 - 5/22/2020	331	13,825	$281,270	11
5/23/2020 - 6/5/2020	327	7,652	$152,087	15
6/6/2020 - 6/19/2020	193	3,777	$76,274	4
6/20/2020 - 7/3/2020	57	999	$23,144	14
7/4/2020 - 7/17/2020	39	760	$21,192	3
7/18/2020-7/31/2020	6	66	$1,343	0

Emergency Closing Time Code by Department

The amount of "emergency closing" time logged varied by department. The following chart lists the number of employees from each department utilizing the time code, the total number of hours used by those employees, and the total amount paid to those employees for the use of the time code:

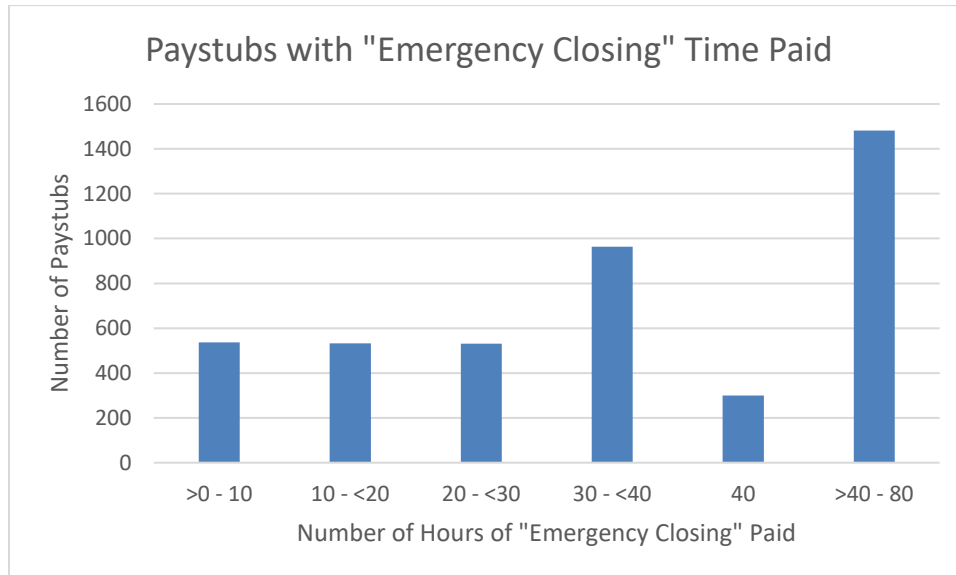| Department	Employees	Hours	Amount
Library	624	69,523	$1,272,657
Social Services	588	17,380	$382,606
Sheriff	399	16,743	$505,998
DPW	173	11,593	$251,636
Clerk	159	28,120	$544,028
Sewerage Management	126	4,597	$100,662
Board of Elections	74	4,641	$109,913
District Attorney	41	6,006	$128,443
Senior Services	35	1,191	$24,397
Health	29	579	$12,204
Probation	27	1,296	$25,842
Mental Health	20	952	$27,631
Law	17	703	$28,514
Public Advocacy	12	864	$19,976
Environment & Planning	12	528	$15,688
Central Police Services	7	255	$6,904
County Executive	7	110	$3,510
Real Property Tax Services	6	373	$7,693
Information & Support Services	5	130	$3,271
Comptroller	3	120	$2,513
Veterans' Services	3	113	$2,498
Personnel	3	120	$2,332
Legislature	3	99	$2,121
Equal Employment Opportunity	2	144	$3,366
Parks	2	40	$763
Labor Relations	1	67	$1,496
Emergency Services	1	48	$1,284
Purchasing	1	56	$921

The Library lists the most employees utilizing the "emergency closing" time code. This is not unexpected, because the libraries were closed to the public during much of this time.

As stated above, two department heads received pay using the "unutilized" pay code. Similarly, one department head received pay using the "emergency closing" time code - a Commissioner of the Board of Elections. The Commissioner received payment for 72 hours of "emergency closing" time in his April 17, 2020 paycheck, which was the last check before the creation of the "unutilized" time code.

As stated above, the "unutilized" time code was created to reflect that the county was not actually closed and that work was continuing to occur, except by individuals who were unutilized. For individuals who logged more than forty hours of "unutilized" time in a pay period, they did not earn

vacation or sick time for that pay period. A spot check of a small sample of employees suggests that this is accurate.

However, for employees who utilized the "emergency closing" time code, a spot check of a small sample of employees suggests that those individuals continue to earn vacation and sick time at the regular rate, even if they logged more than 40 "emergency closing" hours in a pay period. This chart indicates the number of paystubs reflecting the number of hours paid for "emergency closing" time:

Paystubs with "Emergency Closing" Time Paid

Number of Paystubs (y-axis: 0, 200, 400, 600, 800, 1000, 1200, 1400, 1600)

Number of Hours of "Emergency Closing" Paid (x-axis: >0 - 10, 10 - <20, 20 - <30, 30 - <40, 40, >40 - 80)

There were 1,488 pay stubs with greater than 40 hours of "emergency closing." Eliminating library paystubs, there were 940 pay stubs from departments. Of these 940 paystubs, 247 had a posting date of May 1, 2020 or later, which was after the new "unutilized" time code was created and implemented.

Emergency Closing Time Code Use by Managerial Confidential Employees

The majority of employees logging time using the "emergency closing" code were represented by bargaining units. However, 46 managerial confidential (MC) employees also logged time using the "emergency closing" time code. These 46 individuals totaled 2,035 emergency closing hours, receiving $73,714.

Department	Employees	Hours	Amount
Law	12	522	$24,749
District Attorney	8	64	$2,580
Clerk	7	398	$12,248
County Executive	7	110	$3,510

Board of Elections	4	217	$11,113
Legislature	3	99	$2,121
Library	2	484	$14,120
Sheriff	1	72	$1,698
Labor Relations	1	67	$1,496
Information & Support Services	1	2	$79

Recipients of Emergency Closing Time and Overtime

As stated above, 38 employees received both payments for "unutilized" time and overtime. For the employees paid for "emergency closing," 125 also received overtime payments. By department, the number of employees receiving both overtime and "unutilized" payments is as follows:

Department	Number of Employees
Sheriff	51
Health	17
Clerk	13
Senior Services	12
Social Services	10
Public Works	6
County Executive	5
Central Police Services	2
Law	2
Mental Health	2
Sewerage Management	2
Environment & Planning	1
Information & Support Services	1
Probation	1

Of the 125 employees who received both overtime and "emergency closing" payments, 31 of these employees received overtime and "emergency closing" payments in the same pay period. The departments with employees receiving overtime and "emergency closing" payments in the same time period were: Clerk; Health (11); Mental Health; Public Works; Senior Services (5); Sewerage Management; Sheriff (10) and Social Services.

Conclusions

The "unutilized" time code was implemented on April 11, 2020 to accommodate compliance with social distancing guidance, but for individuals without the ability to work remotely. In total, 942 employees logged 107,869 hours of "unutilized" time, resulting in payments of $2,374,413.

The "unutilized" time code was intended to replace the usage of the "emergency closing" time code, because the county was not actually closed while implementing social distancing guidelines. Since March 28, 2020, 2,380 employees logged 166,389 hours of "emergency closing," resulting in payments totaling $3,488,871. Of this amount, 624 library employees logged 69,523 hours, collecting $1,272,657. It is noteworthy that libraries were actually closed for a period due to COVID-19.

Combining these two time codes, the total expenditures for employees remaining home without the ability to work remotely was 2,468 employees being paid $5,863,284 for 274,258 hours. In total, the number of employees by department paid without the ability to work is:

Department	Employees	Hours	Amount
Library	624	69,523	$1,272,657
Social Services	604	44,900	$960,868
Sheriff	398	17,588	$521,968
DPW	178	29,783	$635,913
Clerk	161	35,610	$688,220
Sewerage Management	145	22,404	$496,220
Board of Elections	74	13,625	$297,620
District Attorney	52	11,666	$269,403
Probation	47	8,985	$189,658
Senior Services	37	2,861	$57,407
Health	30	941	$19,430
Law	22	3,128	$122,417
Mental Health	20	3,246	$91,093
Environment & Planning	14	2,270	$66,184
Public Advocacy	11	1,536	$35,514
Central Police Services	10	522	$14,838
County Executive	7	135	$4,137
Real Property Tax Services	6	1,664	$33,744
Information & Support Services	5	450	$11,351
Personnel	4	604	$12,944
Veterans' Services	3	641	$14,890
Legislature	3	502	$10,543
Comptroller	3	440	$9,865
Purchasing	3	335	$5,530
Parks	3	66	$1,227

Equal Employment Opportunity	2	376	$8,789
Labor Relations	1	305	$6,784
Emergency Services	1	152	$4,067

The use of "emergency closing" allows employees who log more than 40 hours in a pay period using that code to earn normal vacation and sick time, whereas "unutilized" does not. Eliminating library employees from the total, 243 pay stubs after May 1, 2020 indicated employees logging greater than 40 hours of "emergency closing" time, with those employees accruing vacation and sick leave.   Similar employees logging time using the "unutilized" code did not.   WE RECOMMEND that the Personnel Department review these transactions for the appropriate use of those time codes and make necessary adjustments.

Overtime and "unutilized" payments were received by 38 employees. Similarly, 125 employees using "emergency closing" also received overtime at some point. For the two time categories,41 employees received payments for their inability to work remotely and overtime in the same period. One of these employees received both on two such instances, and another employee received both on three instances. WE RECOMMEND that the Department of Personnel verify that these payments were made correctly.   Further, WE RECOMMEND that policies and practices be reviewed to minimize scheduling whereby an employee is both unutilized and receiving overtime, especially in the same time period.   Finally, WE RECOMMEND that, in collaboration with representatives of the several bargaining units, consideration be given to creating policies and procedures which facilitate and improve the ability of employees to work remotely.