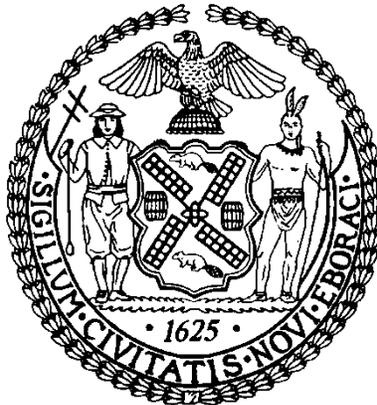


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
John C. Liu
COMPTROLLER**

**MANAGEMENT AUDIT
Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the Management and
Control of Overtime Costs at the
Department of Health and Mental Hygiene**

MG11-067A

October 6, 2011

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET,
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

October 6, 2011

To the Residents of the City of New York

My office has audited the Department of Health and Mental Hygiene (DOHMH) to determine whether it (1) appropriately approved, authorized, and paid overtime in compliance with City rules, regulations, and agreements; and (2) effectively managed and controlled its employee overtime costs. We audit areas like this to determine whether City agencies are adequately monitoring and ensuring optimal efficiency over agency overtime costs.

The audit revealed that DOHMH did not comply with the Citywide Agreement's overtime cap, which precludes certain employees from obtaining payments for overtime. As a result, during Calendar Years 2009 and 2010, DOHMH paid a total of \$3.7 million for overtime hours worked by ineligible employees. The audit also found that DOHMH lacks a centralized review process that would allow it to effectively monitor employees earning overtime and ensure that overtime is distributed equitably and to avoid potential abuse.

The audit makes five recommendations to DOHMH, including that it should comply with regulations governing employees whose salaries exceed the overtime cap. The audit also recommends that DOHMH create a centralized review process to assess whether overtime is distributed equitably and to avoid potential abuse.

The results of the audit have been discussed with DOHMH officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

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*The City of New York
Office of the Comptroller
Management Audit*

**Audit Report on the Management and Control of
Overtime Costs at the Department of Health and
Mental Hygiene**

MG11-067A

AUDIT REPORT IN BRIEF

The Department of Health and Mental Hygiene (DOHMH) is composed of 13 divisions¹ and employed approximately 6,800 individuals during Calendar Years 2009 and 2010. Employees who are covered under the collective bargaining agreement (i.e., Citywide Agreement) between the City and DC 37 AFSCME and who hold certain civil service titles are eligible to earn overtime payments. In accordance with the Citywide Agreement and Fair Labor Standards Act (FLSA), all overtime beyond 40 hours actually worked by an employee is paid at a premium of time-and-a-half (excluding those designated as managers). During Calendar Year 2009, DOHMH paid a total of \$8.3 million in overtime costs to 3,409 (49 percent) of its 7,010 employees, and during Calendar Year 2010, DOHMH paid \$5.2 million in overtime costs to 2,035 (31 percent) of its 6,628 employees. The salary (including differentials) of all employees during Calendar Years 2009 and 2010 was approximately \$359 million and \$398 million, respectively.

This audit determined whether DOHMH: (1) appropriately approved, authorized, and paid overtime in compliance with City rules, regulations, and agreements; and (2) effectively managed and controlled its employee overtime costs.

Audit Findings and Conclusions

Our review found that DOHMH did not fully comply with its own procedures and other applicable rules governing approval, authorization, and payment of overtime. Specifically, DOHMH failed to obtain waivers for employees whose salaries exceeded the Citywide Agreement's overtime cap. As a result, during Calendar Years 2009 and 2010, DOHMH paid a total of \$3.7 million for overtime hours worked by ineligible employees (27 percent of the agency's total overtime expenditure for both years exceeded the amounts allowed). In addition,

¹ DOHMH is organized by Divisions, within which there are Bureaus. In turn, within the Bureaus, there are Programs, and within the Programs there are Work Units.

our testing of the overtime of a sample of 29 employees over the course of a two-month period found minor discrepancies with the way DOHMH processed overtime hours in CityTime.

The audit also found that DOHMH lacks a centralized review process that would allow it to effectively monitor employees earning overtime and ensure that overtime is distributed equitably and to avoid potential abuse.

Audit Recommendations

To address these issues, we make five recommendations, including that DOHMH should:

1. Comply with regulations governing employees whose salaries exceed the overtime cap. Specifically, DOHMH should either obtain appropriate waivers or credit employees with compensatory time rather than paid overtime.
2. Create a centralized review process that would allow DOHMH to assess whether overtime is distributed equitably and to avoid potential abuse.

Agency Response

In its written response, DOHMH officials agreed with the audit's five recommendations. However, DOHMH officials provided explanations regarding the total overtime amount paid to ineligible employees and the timeliness in providing the budgeted overtime figures. While acknowledging DOHMH's explanations, we see no reason to alter our findings.

INTRODUCTION

Background

DOHMH protects and promotes the health and mental well-being of all New Yorkers. DOHMH is composed of 13 divisions and employed approximately 6,800 individuals during Calendar Years 2009 and 2010. Employees who are covered under the collective bargaining agreement (i.e., Citywide Agreement) between the City and DC 37 AFSCME and who hold certain civil service titles are eligible to earn overtime payments. The normal work week for full-time employees who are covered under collective bargaining agreements is either 35 or 40 hours. In accordance with FLSA, all overtime beyond 40 hours actually worked by an employee is paid at a premium of time-and-a-half (excluding those designated as managers).

Approximately 85 percent of DOHMH's employees currently use CityTime to record their daily attendance; the remaining 15 percent of employees use manual timecards². CityTime is a secure, web-based time and attendance system for City employees. It automatically sends requests for leave, overtime, and timesheets to the appropriate supervisors for approval and interfaces with the Payroll Management System (PMS) for pay and leave processing. The manual timecards, for those not directly using CityTime, serve as timesheets, noting leave and overtime, which must be approved by the appropriate supervisors and then sent to Payroll for the timekeepers to enter the information manually into CityTime.

The managers of the various programs within DOHMH are required to submit a Certificate of Overtime Need to the DOHMH's Office of Budget Administration (OBA) so that OBA can track overtime expenditure. OBA reviews the request and assigns an individual Certificate of Overtime Need Reference Number (ConRef number) for each request, which is the authorization number that employees must enter into CityTime or timecards for every instance they work overtime. In July 2009, OBA implemented a new process, whereby at the start of each fiscal year, an overtime budget that is based on full-time employees is allocated to DOHMH's programs.

During Calendar Year 2009, DOHMH paid a total of \$8.3 million in overtime costs to 3,409 (49 percent) of its 7,010 employees, and during Calendar Year 2010, DOHMH paid \$5.2 million in overtime costs to 2,035 (31 percent) of its 6,628 employees. The salary (including differentials) of all employees during Calendar Years 2009 and 2010 was approximately \$359 million and \$398 million, respectively.

² Most of these employees work in the field (i.e., conducting restaurant inspections). Thus, using CityTime would be impractical.

Objective

To determine whether DOHMH: (1) appropriately approved, authorized, and paid overtime in compliance with City rules, regulations, and agreements; and (2) effectively managed and controlled its employee overtime costs.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. On two occasions, DOHMH officials were not forthcoming in providing information required to conduct our tests. One occasion pertains to the standby status of FLSA employees and the other pertains to a listing of employees using a particular ConRef number. Despite repeated requests for information that had a direct impact on our audit tests and findings, DOHMH waited until after the exit conference to provide us with the correct information, thereby impeding our audit. Nevertheless, we still believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was January 1, 2009, through December 31, 2010. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOHMH officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH officials and discussed at an exit conference held on August 1, 2011. On August 24, 2011, we submitted a draft report to DOHMH officials with a request for comments. We received a written response from DOHMH officials on August 31, 2011. In their response, DOHMH officials agreed with the audit's five recommendations. However, DOHMH officials provided explanations regarding the total overtime amount paid to ineligible employees and the timeliness in providing the budgeted overtime figures. While acknowledging DOHMH's explanations, we see no reason to alter our findings.

The full text of the DOHMH response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOHMH did not fully comply with its own procedures and other applicable rules governing approval, authorization, and payment of overtime. Specifically, DOHMH failed to obtain waivers for employees whose salaries exceeded the Citywide Agreement's overtime cap. As a result, during Calendar Years 2009 and 2010, DOHMH paid a total of \$3.7 million for overtime hours worked by ineligible employees (27 percent of the agency's total overtime expenditure for both years exceeded the amounts allowed). In addition, our testing of the overtime of a sample of 29 employees over the course of a two-month period found minor discrepancies with the way DOHMH processed overtime hours in CityTime.

The audit also found that DOHMH lacks a centralized review process that would allow it to effectively monitor employees earning overtime and ensure overtime is distributed equitably and to avoid potential abuse.

The details of these findings are discussed in the following sections of this report.

Overtime Control Procedures Not Consistently Followed

DOHMH did not consistently follow established controls when processing its employees' overtime payments. Specifically, DOHMH did not obtain waivers from the Office of Labor Relations (OLR) for employees who exceeded the City's overtime cap, without which certain employees are no longer eligible to receive payments for overtime worked³. In addition, we found minor discrepancies with the way DOHMH processed overtime hours (at premium and standby rates) into CityTime.

DOHMH did not obtain waivers from the Office of Labor Relations (OLR) for employees who exceeded the City's \$74,079 overtime cap, without which certain employees are no longer eligible to receive payments for overtime worked. As a result, during Calendar Year 2009, DOHMH paid 561 ineligible employees a total of \$2.3 million in overtime payments, and during Calendar Year 2010, DOHMH paid 351 ineligible employees a total of \$1.4 million in overtime payments.

According to the Citywide Agreement and the OLR Interpretive Memorandum #100, "When an employee's annual gross salary rate . . . is higher than the applicable cap . . . such employee shall no longer be eligible to receive payment for such overtime . . . except pursuant to an overtime cap waiver issued by the Office of Labor Relations, and shall instead receive compensatory time at a rate of straight time (1X) for all authorized overtime." As of March 3, 2009, the overtime cap became \$74,079. Thus, eligible employees are those whose gross salary rate, which includes regular gross pay *plus* longevity payments, service increments, and other such applicable additions-to-gross *plus* overtime pay, is less than the overtime cap.

³ FLSA-covered employees do not require OLR waivers in order to earn above the overtime cap. FLSA-exempt employees do require such waivers.

DOHMH failed to adhere to the citywide rules. During Calendar Years 2009 and 2010, it should have provided compensation for overtime above the salary cap in the form of compensatory time to the 561 and 351 employees, respectively. Instead, DOHMH improperly paid a total of \$3.7 million, ranging from \$32 for one employee to \$40,581 for another employee. We recognize the fact that, based on their titles, some of these employees are prohibited from earning compensatory time and can only receive cash payments for any overtime worked. Nevertheless, according to the above-mentioned regulation, without the required OLR waiver, all of these employees were ineligible to receive payments above the overtime cap.

We asked DOHMH officials for copies of the required OLR waivers for Calendar Year 2009; instead we received copies of internal waivers for 56 employees⁴. While it was evident that DOHMH officials generated and approved internal waivers for some of the employees, the fact remains that they did not obtain the required waivers from OLR for *any* of the employees who exceeded the overtime cap. We contacted OLR on March 8, 2011, and were informed that the last time DOHMH requested and obtained overtime cap waivers was in June 2008 - for eight employees.

Overall, the overtime paid to ineligible employees in Calendar Years 2009 and 2010 totaled \$3.7 million. This is 27 percent of the total amount (\$13.5 million) spent on overtime costs during both years combined. Of this amount, \$2.7 million was earned by 237 employees who received overtime in both calendar years. The adherence to an overtime cap should be viewed as more than just a formality. The overtime cap can be used as a monitoring tool that periodically forces management to evaluate the salaries and work schedules of employees approaching the cap and, if necessary, to create new strategies to reduce the overtime costs. This would ensure that the service requirements of the agency are simultaneously balanced with sound fiscal control.

During the exit conference, DOHMH officials admitted that they failed to obtain the required OLR waivers during Calendar Years 2009 and 2010 and stated that moving forward, they would seek waivers on a quarterly basis. We confirmed with OLR that for the first quarter of Calendar Year 2011, DOHMH had requested 302 waivers, of which 275 were approved (the remaining 27 employees did not require waivers).

DOHMH Response: “During the exit conference, the DOHMH reminded the auditors that during 2009 and 2010 New York City experienced the H1N1 health emergency condition (Swine flu) when the DOHMH initiated a mass immunization of 1 million children, resulting in overtime at a cost of \$1.3 million (\$1.1 million in 2009 and \$0.2 in 2010). An e-mail from OLR on October 23rd, 2009 stated ‘this is an exceptional event — only voluntary cash at straight and or premium for both FSLA covered and exempt titles.’ The DOHMH considered this to constitute OLR approval and therefore

⁴ Nine of the 56 employees were part of the 561 employees who exceeded the overtime cap; however, only one of the DOHMH waivers was in reference to the employee exceeding the cap—the remaining eight waivers were for overtime salary exceeding the employees’ annual salary by 5 percent or 20 percent. The other 47 of the 56 employees did not exceed the cap-- rather their overtime salary exceeded their annual salary by 5 percent or 20 percent.

believes that the OT associated with H1N1 should be excluded from the OT ineligibility amount.”

Auditor Comment: DOHMH officials were first made aware of their failure to obtain overtime cap waivers after the auditors brought it to their attention on March 4, 2011. Prior to that time, DOHMH had not requested the waivers since June 2008 and even then the request was made for only eight employees. The H1N1 emergency did not exist during that time and was therefore not the cause of DOHMH’s failure to obtain the waivers since June 2008. In addition, OLR confirmed that in an emergency such as the H1N1, the agency should apply for waivers as soon as practicable, even after the event has occurred and the individuals already worked overtime. In such situations, OLR grants waivers retroactively. Therefore, DOHMH’s argument that the total dollar amounts related to the H1N1 situation should be subtracted from our totals is not a valid argument.

In addition to overtime waivers, according to DOHMH’s policy, employees required to work overtime must first obtain from their immediate supervisors a Certificate of Overtime Need Reference (ConRef) number, which is the authorization number that employees must enter into CityTime or timecards when they work overtime. However, one employee was paid a total of \$1,201 in overtime without using proper ConRef numbers five times⁵. DOHMH officials explained that it is the supervisor’s responsibility to review and approve the employee’s request to work overtime, including the request for ConRef numbers.

In addition, DOHMH officials stated that CityTime does not have the capability to accept ConRef numbers for employees who earn overtime for being on standby⁶. We found 25 instances where five employees were required to be on standby and earned \$7,544 in standby earnings. Taking into account the fact that standby earnings are part of the overtime budget, DOHMH officials should solicit the assistance of CityTime administrators to make it possible for employees to enter the assigned ConRef number in the system for standby status. During the exit conference, DOHMH officials told us that they had requested CityTime administrators to make the appropriate changes. However, it has not been possible due to the system’s design. DOHMH should pursue this request so that it can accurately track overtime payments at standby rates.

⁵ In one of these instances, the employee entered a ConRef number used when employees work compensatory time (“COMP”); however, the employee was paid for premium overtime. For the remaining four instances, no ConRef numbers were used.

⁶ Employees ordered to stand by at home on an involuntary basis, subject to recall, as authorized by the Commissioner or his/her designee, receive as cash payment one-half hour for every one hour of standby time (depending on the FLSA status, some employees can earn time-and-a-half for every standby hour).

Recommendations

DOHMH should:

1. Comply with regulations governing employees whose salaries exceed the overtime cap. Specifically, DOHMH should either obtain appropriate waivers or credit employees with compensatory time rather than paid overtime.

DOHMH Response: “The above recommendation was implemented.”

2. Pursue modifications to CityTime that would ensure that measures are implemented to allow employees to enter a ConRef number for the hours they are required to remain on standby.

DOHMH Response: “The DOHMH will continue to pursue the modification to CityTime with CityTime Administration. As a mitigating control and to assure the accuracy of ConRef numbers, the Office of Payroll will monitor the accuracy of the ConRef numbers that will also be used to determine OT incurred at employee and event levels.”

Lack of Adequate Review of Employees Earning Overtime

DOHMH lacks a centralized review process that would allow it to effectively monitor employees earning overtime and ensure overtime is distributed equitably and to avoid potential abuse. A centralized review process would first and foremost serve as a control mechanism to assess whether the overtime earned was truly required and distributed appropriately.

A budget is one example of a fiscal management tool, which, if used properly, can serve as a means by which management can evaluate whether it is operating efficiently. This is performed by comparing the budgeted overtime to the actual amount of overtime incurred and identifying the areas that are using more overtime than originally approved. It involves analysis to ascertain which particular employees are charging more overtime than others and following up to understand why there are variances within certain units. We attempted to determine whether actual overtime spending has exceeded the budget and were unable to, mainly due to the fact that DOHMH did not provide us with a budget that was readily available.

Over the course of our audit, we requested this information from DOHMH on three separate occasions, expecting it to be readily available. After the third request, we were told that DOHMH is in the process of including approximately 1,500 of its part-time employees into the budget because, if it did not do that, then the actual amount of overtime, which *does* include part-time employees, would be considerably greater than the budgeted amount, which *does not*. DOHMH officials stated that they “do not establish a separate overtime budget for part time employees as it is difficult to forecast total part time salary expenditures because their hours vary weekly depending on Agency needs including emergency situations.” However, emergency situations arise for all employees, including those who are full-time. We question how DOHMH

can effectively monitor its overtime costs without a meaningful budget. DOHMH provided us with a “Budget and Actual OT Analysis” for Fiscal Years 2009 and 2010 a month after our initial request.

DOHMH Response: “We disagree with the auditors regarding the timeliness of providing the budget and actual incurred OT for full-time and part-time employees. Although we told the auditors orally and in writing that the ‘budget and actual overtime figures for full-time employees were readily available,’ the auditors preferred to wait and obtain the budget and actual overtime figures for both full-time and part-time employees together at the same time. ...

“DOHMH immediately offered the full-time employee data and acted promptly to obtain the part-time employee data.”

Auditor Comment: DOHMH’s version of what transpired is not accurate. We initially requested the budgeted and actual overtime amounts on May 16, 2011, and followed up on our requests on May 23 and June 2, respectively. It was not until we once again contacted DOHMH, on June 6, 2011, to inquire about the reason for the delay that DOHMH informed us that it only maintains a budget for full-time employees.

Contrary to DOHMH’s response that the auditors “preferred to wait and obtain the budget and actual overtime figures for both full-time and part-time employees together at the same time,” upon learning of how the budget was maintained, we specifically requested in an e-mail sent June 7, “whatever you have for the budgeted amount and actual amount spent in overtime for calendar years 2009 and 2010.” We did not receive the budgeted and actual overtime figures until June 13, 2011 - a month after our initial request.

According to DOHMH officials, ConRef numbers are a tool used to track the number of overtime hours and expenses incurred by each program area. However, if the ConRef numbers are not accurately reported, as indicated in our findings above, then DOHMH’s tracking process would be flawed as well, and errors and inefficiencies with the ConRef numbers from a prior year would be incorporated into the following year’s budget. DOHMH officials also stated that, based on the information gathered from the ConRef numbers, they are then able to request additional grants from the Federal and State governments to cover overtime costs and emergency situations.

DOHMH officials also stated that the Division and Bureau heads (Deputy and Assistant Commissioners) are responsible for the monitoring of overtime expenditures. We interviewed five of these officials to ascertain how they monitored and tracked overtime. They explained that, on a monthly basis, they receive overtime reports for the specific programs they oversee and that they use these reports to conduct an analysis of overtime spending to identify trends and changes from year to year. When asked about the existence of policies and procedures, specifically regarding the monitoring of overtime, they indicated that there is an agency-wide policy

regarding overtime, but they do not know whether every Division follows the same monitoring criteria.

The agency-wide policy concerning overtime states: “Managers/Supervisors/Directors are urged to be more vigilant in reviewing overtime reports to ensure that authorized full-time employees’ over-time expenses remains within the allocated budget.” It also indicates steps to take when the overtime expenses for a program exceed its overtime budget for full-time staff, and when one division performs work on behalf of another division and overtime work is anticipated. However, it does not provide criteria for Division and Bureau heads to monitor specific areas of concern, such as the possibility of employees inflating overtime payments as they approach retirement age. Only one of the five Division heads said that he monitors employees approaching retirement so as to ensure that they do not inappropriately inflate their earnings prior to retiring.

In addition, all five of the Division heads stated that they followed up with employees who exceed their salary by 5 percent and 20 percent, as well as with employees who exceed the overtime cap so as to issue internal waivers. However, this is in direct contrast to what we found during our review of employees who earned overtime during Calendar Year 2009. Despite the fact that 972 employees earned \$6.6 million in overtime that exceeded their annual salary by 5 percent to more than 20 percent, as mentioned earlier in the report, DOHMH issued only 56 internal waivers during Calendar Year 2009, one of which pertained to the overtime cap but had never been submitted to OLR. The remaining 55 waivers were for overtime salary exceeding the employees’ annual salary by 5 percent or 20 percent. The actual number of waivers submitted in comparison to the number of employees who exceeded their annual salary and their overtime cap does not support the statements made by the Division heads. DOHMH needs to establish a centralized review process so that specific areas of concern can be reviewed and followed up. Without adequate oversight and monitoring, an environment is created where overtime can become the rule rather than the exception.

The routine analysis of overtime is an essential undertaking required for the cost effectiveness of any program. The analysis should indicate changes in overtime spending within different units as well as if there has been an equitable distribution of overtime. This type of an examination would allow DOHMH to identify significant cost drivers, thereby ensuring optimal efficiency over agency resources.

Management’s monitoring and review of overtime earnings is essential when taking into consideration the fact that pension benefits are based on an employee’s total income, including overtime, and not just on the base salary alone. As such, there may be an incentive for employees to accrue a greater amount of overtime in the final years of employment.

In our review of DOHMH’s overtime costs, we identified employees approaching retirement age and employees who earn excessive amounts of overtime and analyzed their earnings over a two-year period to determine whether there was evidence that overtime was inappropriately steered toward these employees. In an effort to actively manage its overtime

costs, DOHMH should conduct further analysis of these employees to ensure that the inappropriate allocation of overtime does not occur.

Recommendations

DOHMH should:

3. Create a centralized review process that would allow DOHMH to assess whether the overtime is distributed equitably and to avoid potential abuse.
4. Ensure that a budget is created and kept up-to-date and should use it to collect, analyze, and monitor overtime spending.
5. Establish and enforce detailed policies and procedures that Division and Bureau heads should use to monitor areas of possible abuse of overtime.

DOHMH Response: “The DOHMH agrees with the above three recommendations”

Distribution of Overtime

As part of our analysis, we assessed the distribution of overtime wages that DOHMH paid to high-overtime earners in Calendar Years 2009 and 2010 based on (1) whether the employee was at or over the minimum age for retirement and (2) years of service. Focusing on DOHMH’s high-overtime earners, we determined whether there were indications that higher levels of overtime were being inappropriately accrued by employees at or over the minimum age eligible for retirement.

Employees at Minimum Age Eligible for Retirement

During Calendar Years 2009 and 2010, DOHMH paid a total of \$8.3 million in overtime costs to 3,409 employees and \$5.2 million to 2,035 employees, respectively. We reviewed these employees’ overtime earnings and found that 911 (27 percent) of the 3,409 employees and 560 (28 percent) of the 2,035 employees were at or over the minimum age for retirement as indicated in Table I.

Table I

Total Number of Overtime Earners Approaching Retirement

Years of City Service	Calendar Year 2009			Calendar Year 2010		
	Employees who Earned OT	Employees who were at Least 55 Yrs Old	Total OT Earned by Those at Least 55 Yrs Old	Employees who Earned OT	Employees who were at Least 55 Yrs Old	Total OT Earned by Those at Least 55 Yrs Old
0 – 5	1407	196	\$275,092	768	91	\$186,012
6 – 10	631	151	\$299,509	359	90	\$148,505
11 – 15	601	212	\$346,101	380	130	\$216,323
16 – 20	372	145	\$365,916	232	88	\$212,633
21 – 25	206	87	\$252,800	170	81	\$276,659
Over 25	192	120	\$357,994	126	80	\$267,206
Total	3409	911	\$1,897,412	2035	560	\$1,307,338

The overtime wages for the 911 employees represented 23 percent of the \$8.3 million spent by DOHMH during Calendar Year 2009. Likewise, the overtime wages for the 560 employees represented 25 percent of the \$5.2 million spent by DOHMH during Calendar Year 2010. We also compared the overtime figures for 2009 and 2010 and noted that there were 414 employees at or over the minimum age for retirement who earned a total of \$2.5 million in overtime in addition to the \$51.3 million paid in salaries during both calendar years. This accounted for 18.5 percent of the total overtime payments for the two years combined.

Nevertheless, our analysis revealed that DOHMH employees at or over the minimum age for retirement were not disproportionately represented among those employees who earned overtime. For both Calendar Years 2009 and 2010, the percentage of employees who received overtime payments who were at or over the minimum age for retirement was equal to the percentage of employees 55 or older at the agency as a whole.

Employees with Excessive Overtime

Our review of DOHMH overtime data showed that \$2.4 million (29 percent) of the \$8.3 million in overtime payments made during Calendar Year 2009 and \$1.9 million (36 percent) of the \$5.2 million in overtime payments made during Calendar Year 2010 were made to employees whose overtime earnings exceeded their regular salary (including differentials) by 20 percent or more.

Twenty-three (15 percent) of the 153 high overtime earners in Calendar Year 2009 and 23 (19 percent) of the 118 high overtime earners in Calendar Year 2010 were at or over the minimum age for retirement. Seventy-nine of these high overtime earners earned overtime during both calendar years- a total of \$2.7 million in addition to the \$8.4 million paid in salaries. This accounted for 20 percent of the total amount in overtime earnings for the two years combined.

The highest overtime earner during Calendar Year 2010 received a total of \$74,701 in overtime payments. Since his annual salary for the year was \$102,750, his overtime pay equaled 73 percent of his annual salary— overall his overtime pay, combined with his salary, was \$177,451. This employee was also cited earlier in the report for receiving two payments (one payment at time-and-a-half and another at half of his regular rate) for the same 12 hours of overtime.

The more overtime payments that an employee accumulates in the years immediately preceding retirement, the higher the pension costs incurred by the City. A study performed by the New York State Attorney General’s (NYSAG) Office of 50 public agencies, including state and local agencies, municipalities, and authorities across New York State, indicated that employees approaching retirement accrued substantially more overtime during the period which likely would be used to calculate their pension benefits, thereby inflating their pension benefit⁷.

We did not find that employees at or over the minimum age for retirement were overly represented among DOHMH’s highest overtime earners. For Calendar Years 2009 and 2010, 15 and 19 percent, respectively, of the highest overtime earners were at or over the minimum age eligible for retirement. (For the agency as a whole, 27 and 28 percent of all DOHMH employees were at or over the minimum retirement age.) Nevertheless, we are concerned about the risk of potential overtime abuse and its associated additional costs, considering the weaknesses discussed earlier in this report.

According to Comptroller’s Directive #1, *Principals of Internal Control*, “effective management of an organization’s workforce is essential to achieving desired results and an important part of internal control.” To better manage its costs, DOHMH should continue to evaluate the costs identified by our audit and ensure they are justified.

DOHMH Response: “The DOHMH acknowledges the Comptroller's concern about the risk of potential abuse of OT by employees who approach retirement age. The DOHMH will review all OT requests based upon agency needs and skills by recognizing the need to effectively manage costs.”

⁷ “*Pension Padding: We All Pay the Price.* Preliminary Report,” July 7, 2010; State of New York Office of the Attorney General.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. On two occasions, DOHMH officials were not forthcoming in providing information required to conduct our tests. One occasion pertains to the standby status of FLSA employees and the other pertains to a listing of employees using a particular ConRef number. Despite repeated requests for information that had a direct impact on our audit tests and findings, DOHMH waited until after the exit conference to provide us with the correct information, thereby impeding our audit. Nevertheless, we still believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was January 1, 2009, through December 31, 2010.

To accomplish our objective and to obtain an understanding of payroll procedures regarding overtime (i.e., process of approving, recording, and paying), we conducted meetings with the following DOHMH officials: Controller, Director of Payroll, Senior Timekeeper, Director of OBA, and OBA staff responsible for issuing the ConRef numbers. In addition, we interviewed the Director of the CityTime Project, which is overseen by the Office of Payroll Administration, to gain an understanding of the recording of daily attendance and overtime as well as the internal controls established in CityTime.

To understand the regulations and guidelines that governed the processing of overtime, we reviewed Comptroller's Directive Nos. 1, 13, and 19 pertaining to payroll procedures. We also reviewed the DOHMH organizational chart, the Fiscal Year 2010 Mayor's Management Report, and other relevant information obtained from the DOHMH and OLR websites. The audit criteria included the following:

- DOHMH Time and Leave Manual
- OLR Executed Contract Citywide Agreement
- OLR Interpretive Memorandum No. 100: Revised Overtime Cap Pursuant to 1995-2001 Citywide Agreement, Article IV, Section 7 e.
- Fair Labor Standards Act - Overtime

DOHMH provided us with an electronic file from PMS listing all employees who were active during Calendar Years 2009 and 2010, including those who received *paid* overtime. To test the reliability of the data, we compared the DOHMH lists of employees and overtime payments to our own independently generated lists also extracted from PMS and determined whether the information provided by DOHMH was complete. We then analyzed the lists for each calendar year and identified 3,409 out of 7010 employees who received a total of \$8.3 million in overtime

payments during Calendar Year 2009. In addition, we identified 2,035 out of 6,628 employees who received a total of \$5.2 million in overtime payments during Calendar Year 2010.

To ascertain whether DOHMH complied with the rules governing the overtime cap⁸ of \$74,079, we reviewed the individual salary and overtime earnings for the 3,409 employees who received overtime payments during Calendar Year 2009 and identified 561 employees who exceeded the cap and required a waiver from OLR because they were FLSA-exempt⁹. We contacted a representative from OLR to determine whether DOHMH obtained waivers for these employees. Based on the results of this analysis, we expanded our test to identify the total number of employees who exceeded the overtime cap during Calendar Year 2010. We also determined whether the 561 employees who exceeded the overtime cap during Calendar Year 2009 continued to exceed the cap during Calendar Year 2010.

To verify the accuracy of the overtime payment calculations, we first identified the top 10 work units that as a whole earned the most overtime during Calendar Year 2009. We then randomly selected 25 employees from the top 10 work units¹⁰ and randomly selected the month of March 2009 for our review. In addition, we judgmentally selected the top 25 employees from those who earned overtime and exceeded the cap during Calendar Year 2009 and randomly selected the month of November 2009 for our review of these employees. In total, we selected 50 different employees for testing purposes.

To substantiate the overtime payments, including CityTime timesheets, manual timecards, and payroll reports for these 50 employees, we obtained from DOHMH documentation for the two randomly selected months (March and November 2009). We also obtained from our IT division the 2009 overtime reports generated by the City Human Resources Management System (CHARMS). We determined that 29 of the selected 50 employees earned a total of \$94,055 in overtime during our period of review¹¹. For the 29 employees, we compared the overtime recorded in the employees' timesheets and timecards to the amount recorded in the 700 Reports. We also verified whether the employees were entitled to earn overtime in accordance with the Citywide Agreement. Furthermore, we verified whether DOHMH approved the overtime for these employees, whether employees used the correct ConRef numbers assigned to them, and whether overtime rates paid complied with the Fair Labor Standards Act.

To identify trends in the employees earning overtime, we analyzed the overtime data for the 3,409 employees who earned overtime during Calendar Year 2009. We prepared a frequency distribution to identify those employees who worked several years in City service, who are at or

⁸ The cap became effective as of March 3, 2009. Prior to that date, the overtime cap was \$71,230; thus, there is a possibility that there might be more employees who may have exceeded the cap and we were not able to identify them.

⁹ DOHMH provided us with the FLSA status for each of the 561 employees to ascertain that these employees were FLSA-exempt-- thereby requiring overtime cap waivers from OLR.

¹⁰ There were a total of 1,824 employees in the top 10 work units, of whom 1,296 earned overtime.

¹¹ Out of the first set of 25 employees, five earned overtime totaling \$2,660 during March 2009, and out of the second set of 25 employees, 24 earned overtime totaling \$91,395 during November 2009.

over the minimum age eligible for retirement, and who earned overtime. We divided the data into five-year increments ranging from five to 25 years as well as those with over 25 years of City service. We also identified employees earning overtime of 20 percent and above their regular income. In addition, to determine how many of the 3,409 employees continued to earn overtime in Calendar Year 2010, we performed the same analysis for these employees for Calendar Year 2010. We then interviewed the heads of DOHMH's top five Divisions to ascertain whether they performed similar types of analysis and to understand how they monitored and tracked overtime.



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Thomas Farley, M.D., M.P.H.
Commissioner

ADDENDUM
Page 1 of 7

August 31, 2011

H. Tina Kim
Deputy Comptroller for Audit
Office of the New York City Comptroller
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on the
Management and Control of
Overtime Costs by the Department
of Health and Mental Hygiene
MG11-067A

Dear Deputy Comptroller Kim:

We have received and reviewed your draft audit report regarding the management and control of overtime by the Department of Health and Mental Hygiene (DOHMH).

The auditors raised the following two issues: 1) the DOHMH failed to obtain oversight agency waivers for employees whose salaries exceeded the Citywide Agreement's overtime cap and 2) the DOHMH lacked a robust centralized review and monitoring of overtime. The auditors made five recommendations with which the DOHMH agrees and is in the process of implementing. The attached details the DOHMH's response to the issues raised and the auditors' recommendations.

We appreciate the efforts and professionalism of your staff in the performance of this audit. If you have any questions or need further information, please contact Sara Packman, Assistant Commissioner, Audit Services, at (347) 396-6679.

Sincerely,


Thomas Farley, MD, MPH
Commissioner

cc: Patsy Yang, DrPH
Assunta Rozza
Sara Packman

**RESPONSE TO THE NEW YORK CITY COMPTROLLER'S AUDIT OF THE OF THE
DEPARTMENT OF HEALTH AND MENTAL HYGIENE'S MANAGEMENT AND
CONTROL OF OVERTIME COSTS
Audit MG11-067A**

The Department of Health and Mental Hygiene (DOHMH) reviewed the draft audit report on the DOHMH's Management and Controls of Overtime Costs and thanks the auditors for the opportunity to respond. The objectives of the audit were to determine whether the DOHMH 1) appropriately approved, authorized, and paid overtime in compliance with City rules, regulations, and agreements and 2) effectively managed and controlled its employees' overtime (OT) costs. The audit scope was calendar years 2009 and 2010.

The audit report concludes that, during the audit period, DOHMH failed to obtain oversight agency waivers for employees whose salaries exceeded the Citywide Agreements' overtime cap and that DOHMH lacks a sufficiently robust centralized review process to effectively monitor that overtime is distributed equitably and to avoid potential abuse. The auditors acknowledge that in their testing of a sample of 29 employees over a two-month period they found only minor discrepancies with the way the DOHMH processed overtime hours in CityTime. The auditors' analysis revealed that the percentage of OT earners who were 55 or older was equal to the percentage of employees 55 or older at the agency as a whole. The auditors also state that employees at or over the minimum age for retirement were not overly represented among the DOHMH's highest OT earners.

The auditors made five recommendations with which the DOHMH agrees and is implementing:

- The DOHMH enhanced the process for obtaining waivers from the Office of Labor Relations (OLR) for employees who exceed the Citywide Agreement's overtime cap and employees exempt from the Fair Labor Standards Act (FLSA). The DOHMH received approval for all waivers that were submitted to OLR for the first quarter of calendar year (CY) 2011.
- The DOHMH will enhance and formalize its central review process of overtime (OT). The Office of Budget Administration will issue monthly budget and incurred OT reports to the divisions to supplement the OT assignment and budget monitoring.
- The DOHMH will continue to distribute OT warning reports that list employees whose gross earnings exceed their base salary and the employees' total incurred OT.
- Reports of excessive OT usage (over 20% of total employee salary) will be reviewed at the Agency, division and bureau levels. Managers will be asked to review employees with excessive OT usage and justify the OT need.
- Requests for overtime approval for employees (for both FLSA and non-FLSA covered employees) whose gross earnings already exceed 20% of total salary will require a written justification from divisional senior management.
- The DOHMH is also enhancing its OT policies and procedures to include OT threshold alarms (red flags) for management; budget reminder reports, an automated

reconciliation of OT budget versus actual incurred, and regular managerial OT need reviews.

Although DOHMH appreciates the auditors' work and recommendations for improving overtime monitoring and controls, we disagree that DOHMH was not forthcoming in providing information required to conduct tests and waited to the exit interview to provide them with correct information. During the audit time, DOHMH relocated and consolidated the Agency's headquarters involving over 2,800 employees from 17 locations to one location in Queens (Gotham Center). The move to Gotham Center required concerted and sustained management and staff efforts in Finance and other divisions of files and documents among other things. Despite this major effort, requested documents were provided timely.

The auditors state that "During Calendar Year 2009, DOHMH paid ... overtime costs to 3,409 (49 percent) of its 7,010 employees."

In fact, of the 3,409 employees who received the OT during CY 2009;

1. 45% (1,558 employees) of 3,409 employees worked on H1N1 (Swine Flu) emergency.
2. Of the remaining 55% of 3,409 employees, 1,074 employees received less than \$1,000 of which 822 employees received less than \$500.

The following is our detailed response to the auditors' findings and recommendations.

Issue #1: Overtime Control Procedures Not Consistently Followed.

OLR Waivers

The DOHMH acknowledges that it "... did not obtain waivers from the Office of Labor Relations (OLR) for employees who exceeded the City's \$74,079 overtime cap..." The root cause for this failure was that the employee responsible for requesting the waivers for many years retired due to illness without handing off this activity to others. Once management became aware of this failure, a documented process was implemented and for the first quarter of CY 2011, the DOHMH requested and received waivers from OLR.

The auditors state that "...during Calendar Year 2009, the DOHMH paid 561 ineligible employees a total \$2.3 million in OT payments". During the exit conference, the DOHMH reminded the auditors that during 2009 and 2010 New York City experienced the H1N1 health emergency condition (Swine flu) when the DOHMH initiated a mass immunization of 1 million children, resulting in overtime at a cost of \$1.3 million (\$1.1 million in 2009 and \$0.2 in 2010). An e-mail from OLR on October 23rd, 2009 stated "this is an exceptional event - only voluntary cash at straight and or premium for both FSLA covered and exempt titles." The DOHMH considered this to constitute OLR approval and therefore believes that the OT associated with H1N1 should be excluded from the OT ineligibility amount.

By reducing "the total OT that needs OT waiver" of \$2.3 million (CY 2009) and \$1.4 million (CY 2010) for H1N1 emergency of \$1.1 million (CY 2009) and \$0.2 million (CY 2010) the DOHMH's true OT payments to ineligible employees is \$1.2 million for each year.

	CY 2009	CY 2010
Total OT that needs OT waiver	\$2.3	\$1.4
H1N1 OT	(\$1.1)	(\$0.2)
Total ineligible OT	<u>\$1.2</u>	<u>\$1.2</u>

Note: Dollars in Millions

Recommendation

1. Comply with regulations governing employees whose salaries exceed the overtime cap. Specifically, DOHMH should either obtain appropriate waivers or credit employees with compensatory time rather than paid overtime.

DOHMH Response

The above recommendation was implemented.

Certificate of Overtime Need Reference Number

In late 2006, DOHMH requested that CityTime administrators modify the system to enable employees working “standby” to enter an assigned Certificate of Overtime Need Reference number (ConRef) which is the authorization number that employees must enter into CityTime or timecards when they work overtime. However, the request for modification was not implemented by CityTime.

The auditors acknowledge that the DOHMH uses a Certificate of Overtime Need process to track overtime. The auditors also acknowledge that in their testing of a sample of 29 employees over a two month period they found only minor discrepancies in the way DOHMH processed overtime hours in CityTime. The auditors cite that one employee was paid overtime in five instances “without using proper ConRef numbers.” The DOHMH recognizes the need to ascertain that ConRef numbers are entered correctly. However, in the one case cited in the report, the incorrect ConRef number was the result of a keying error that was not detected. Going forward, the DOHMH’s Payroll will more closely review ConRef numbers for accuracy after they are entered in CityTime.

Recommendation

2. Pursue modification to CityTime that would ensure that measures are implemented to allow employees to enter a ConRef number for the hours they are required to remain on standby.

DOHMH Response

The DOHMH will continue to pursue the modification to CityTime with CityTime Administration. As a mitigating control and to assure the accuracy of ConRef numbers, the Office of Payroll will monitor the accuracy of the ConRef numbers that will also be used to determine OT incurred at employee and event levels.

Issue #2 Lack of Adequate Review of Employees Earning Overtime

The auditors state that “DOHMH lacks a centralized review process that would allow it to effectively monitor employees earning overtime and ensure overtime is distributed equitably and to avoid potential abuse”. Although the agency divisions monitor overtime, the DOHMH agrees with the auditors that a more robust centralized review process will further enhance the DOHMH’s existing controls over overtime.

The DOHMH will continue to use O’T budget as a fiscal management tool. While the DOHMH has a budget for OT expenditures for full-time employees, it does not have a separate OT budget for part-time employees. The DOHMH has started the process of establishing an overtime budget for part-time employees separately. The DOHMH will also create a new report that will compare actual overtime incurred against the budget. The report will further enhance the controls over monitoring the DOHMH’s overtime at the central level as well as at the divisional level.

The audit report states that the DOHMH provided the auditors with a “Budget and Actual OT Analysis for CY 2009 and 2010 a month after our initial request.” We disagree with the auditors regarding the timeliness of providing the budget and actual incurred OT for full-time and part-time employees. Although we told the auditors orally and in writing that the “budget and actual overtime figures for full-time employees were readily available,” the auditors preferred to wait and obtain the budget and actual overtime figures for both full-time and part-time employees together at the same time. We also stated that “DOHMH does not establish a separate overtime budget for part-time employees as it is difficult to forecast total part-time salary expenditures because their hours vary weekly depending on Agency needs....”

To accommodate the auditors’ request for part-time employees, it was necessary for us to involve DOHMH’s IT to prepare the “Budget and Actual OT Analysis for CY 2009 and 2010”. The DOHMH’s internal budget system grouping is different from the City’s Payroll Management System (PMS) groupings. Therefore, it took extra time to prepare the requested reports for the following reasons; 1) DOHMH’s IT had to extract raw data from the system, 2) re-group the raw data, 3) re-format the data to suit the auditors’ needs, and 4) forward the prepared reports to Office of Budget Administration and Payroll for their review. DOHMH immediately offered the full-time employee data and acted promptly to obtain the part-time employee data.

Recommendations

3. *Create a centralized review process that would allow DOHMH to assess whether the overtime is distributed equitable and to avoid potential abuse.*

4. *Ensure that a budget is created and kept up-to-date and should use it to collect, analyze, and monitor overtime spending.*
5. *Establish and enforce detailed policies and procedures that Division and Bureau Heads should use to monitor areas of possible abuse of overtime.*

DOHMH Response

The DOHMH agrees with the above three recommendations and will make the following changes:

- Enhance and formalize its Payroll and Office of Budget Administration central review process of overtime (OT). The Office of Budget Administration will issue a new monthly budget and incurred OT report to supplement the OT assignment and budget monitoring. A budget for OT of part-time employees will be created.
- Continue to distribute its OT warning reports that list employees whose gross earnings exceed their base salary and the employees' total incurred OT.
- Reports of excessive OT usage (over 20% of total employee salary) will be reviewed at the Agency, division, and bureau levels. Managers will be asked to review employees with excessive OT usage (over 20% of total employee salary), and justify the OT need.
- Requests for overtime approval for employees (for both FLSA and non-FLSA covered employees) whose gross earnings already exceed 20% of total salary will require a written justification from the divisional senior management.
- The Office of Payroll will monitor the accuracy of the ConRef numbers that will be used to determine OT incurred at employee and event levels. The OT cost estimate that is included in the original ConRef request submitted to the Office of Budget Administration will be used to determine levels of usage and create warning reports as employees reach budget thresholds.
- OT policies and procedures will be enhanced and will include OT threshold alarms (red flags) for management; budget reminder reports, an automated reconciliation of OT budget versus actual incurred, and regular managerial OT need reviews.

Topic: Distribution of Overtime

- *Employees at Minimum Age Eligibility for Retirement*

The auditors assessed the distribution of overtime wages that the DOHMH paid to high-overtime earners in CY 2009 and 2010 was based on whether 1) the employee was at or over the minimum age for retirement and 2) years of service. The auditors' analysis revealed that the DOHMH employees at or over the minimum age for retirement were proportionately represented among those employees who earned overtime. The auditors acknowledged that for both CY 2009 and 2010, the percentage of OT earners who were 55 or older was equal to the percentage of employees 55 or older at the agency as a whole.

- Employees with Excessive Overtime

The auditors analyzed the DOHMH's highest overtime earners and confirmed that they did not find that employees at or over the minimum age for retirement were overly represented among the DOHMH's highest overtime earners.

The DOHMH acknowledges the Comptroller's concern about the risk of potential abuse of OT by employees who approach retirement age. The DOHMH will review all OT requests based upon agency needs and skills by recognizing the need to effectively manage costs.