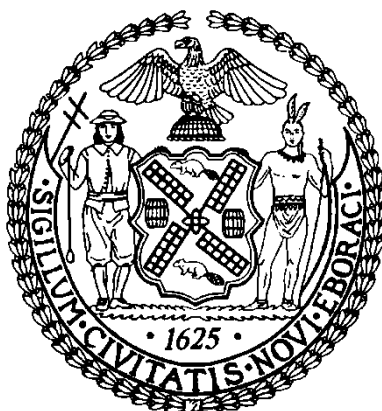


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

**FINANCIAL AUDIT
H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on Controls over Overtime
Payments at the
New York City Law Department**

FR10-145A

March 25, 2011



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

John C. Liu
COMPTROLLER

March 25, 2011

To the Residents of the City of New York:

My office has audited the effectiveness of the New York City Law Department's controls over overtime payments. We audit entities such as the Law Department as a means of ensuring agency compliance with City laws.

The audit found that Department officials performed multiple steps and reviews before overtime for eligible employees was authorized. The Department has satisfactory internal controls for separating duties and monitoring an employee's work hours. However, the Department did not comply with the Citywide Agreement's overtime cap, which precludes certain employees from obtaining payments for overtime. As a result of not complying with the cap and not obtaining required waivers, the Department paid 21 employees for inappropriate overtime totaling \$82,954 in calendar year 2009, and paid 25 employees for inappropriate overtime totaling \$103,851 in calendar year 2008.

The audit recommends that the Law Department comply with regulations governing employees whose salaries exceed the overtime cap.

The results of the audit have been discussed with Law Department 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 that reads "John C. Liu".

John C. Liu

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The City of New York
Office of the Comptroller
Financial Audit

**Audit Report on Controls over Overtime Payments at the
New York City Law Department**

FR10-145A

AUDIT REPORT IN BRIEF

We performed an audit on the New York City Law Department's (Department) compliance with guidelines governing the authorization and payment of overtime. 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, 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 Fiscal Year 2009, the Department paid a total of \$1,153,357 in overtime to 273 of 1,547 employees. The base salaries of all employees was approximately \$94 million.

Audit Findings and Conclusions

The Department generally complied with the rules governing the authorization of overtime except for those addressing the overtime cap. As part of the Department's compliance, we found that Department officials performed multiple steps and reviews before overtime for eligible employees was authorized. The Department has satisfactory internal controls for separating duties and monitoring an employee's work hours. However, we found that the Department did not comply with the Citywide Agreement's overtime cap, which precludes certain employees from obtaining payments for overtime. As a result of not complying with the cap and not obtaining required waivers, the Department paid 21 employees for inappropriate overtime totaling \$82,954 in calendar year 2009. The Department's practice of paying overtime to employees whose salaries exceed the overtime threshold was not limited to 2009. We found that 25 employees whose annual salaries exceeded the calendar year 2008 overtime cap of \$71,230 earned a total of \$103,851 in excess overtime. Overall, the excess overtime paid in calendar years 2008 and 2009 totaled \$186,805. Of this amount, \$172,053 was earned by 16 employees in calendar years 2008 and 2009.

We note that all payments for ineligible overtime are a factor in calculating the pensions of employees who are members of the New York City Employees' Retirement System. The retirement system's formula for calculating pension payments to employees is based in part on an

employee's highest three consecutive years of earnings, including overtime payments.¹ Consequently, inappropriate overtime payments may inflate the value of an employee's pension, which are payable for the remainder of a retired employee's lifetime and could be passed on to a beneficiary.

Audit Recommendation

- This report makes one recommendation, that the Department should comply with regulations governing employees whose salaries exceed the overtime cap.

Department Response

Department officials agreed with our recommendation and stated that they have "received overtime waiver approvals from OLR for the appropriate staff for 2010 and 2011 and will do so going forward." Regarding our concern about inflated pensions, the Department stated that "none of the affected employees are expected to retire within the next few years." We note, however, that the retirement system's formula for calculating pension payments is based in part on an employee's highest three consecutive years of earnings, including overtime payments, irrespective of an employee's retirement date.

¹ According to rules governing Tier 4 members of the City's retirement system.

INTRODUCTION

Background

The Department is responsible for the legal affairs of the City as attorney for the City and certain non-City agencies and pension boards. The Department is composed of 17 legal divisions and three support divisions. 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 the Citywide Agreement and Fair Labor Standards Act, 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).

Employee requests for overtime are submitted through the Department's electronic "e-Form" system. Overtime requests are reviewed by direct supervisors for appropriateness and then further reviewed by a division chief. Subsequent to these reviews, approved requests are submitted to the Department's Chief of Administration for final approval and notification to the employee. If approved, an employee who works overtime must submit to a supervisor an "overtime payment request form" that indicates the hours worked. Upon verification by the supervisor, the information is submitted electronically to the employee's timekeeping unit, which verifies that the requested overtime hours were recorded in the Department's CityTime timekeeping system.²

During Fiscal Year 2009, the Department paid a total of \$1,153,357 in overtime to 273 of 1,547 employees. The base salaries of all employees was approximately \$94 million.

Objective

The objective of this audit was to determine whether the Department complied with labor laws, Department policies and procedures, and other City guidelines governing the authorization and payment of overtime.

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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was performed in accordance with the

² The Department participates in the City's "CityTime" timekeeping system, which automatically records and tallies daily and weekly hours worked for each employee.

audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was Fiscal Year 2009.³

To understand the internal control requirements and process relevant to planning our audit, we obtained copies of Comptroller's Directive Nos. 1, 13, 14, and 19 that pertain to payroll procedures; obtained and reviewed the Department's organizational chart to familiarize ourselves with key lines of personnel; obtained and reviewed a flowchart of the Department's overtime recording process; obtained information on the overtime cap from the Office of Payroll Administration website and from the Comptroller's Payroll Division; obtained and reviewed a copy of the Citywide Agreement; and obtained the Fair Labor Standards Act for guidelines on overtime worked and paid.

To understand the Department's procedures for obtaining overtime approval and recording overtime worked, we interviewed the Director for Audits, the Director of Personnel, the Chief of Payroll and Timekeeping, and the Timekeeping Division Chief. We conducted walk-throughs with Department officials to understand the Department's procedures for approving and processing overtime worked and paid. We documented our understanding of these processes in memoranda that we requested Department officials review and confirm.

To ascertain that we obtained complete Department overtime data and to assess the reliability of the IT processed data for total overtime payments, we compared the Department's list of all overtime payments for calendar year 2009 to a list extracted from the City Payroll Management System by our IT Audit Group. We reconciled the two lists and ascertained that 253 employees received overtime totaling \$914,345 during calendar year 2009. We then analyzed the data to examine the Department's adherence to rules governing the Office of Labor Relations overtime cap of \$74,079 that was effective March 3, 2009. After identifying 21 employees who exceeded this cap, we selected a sample of six employees. We reviewed documentation that we requested and obtained from the Department. The documentation included timesheets, project approval hours, payroll reports, and any waivers from the Office of Labor Relations.

To verify the accuracy of overtime payment calculations and to determine whether the Department complied with the Citywide Agreement and the federal Fair Labor Standards Act, we requested from the Department a list of all overtime paid to employees for Fiscal Year 2009. Of the 273 employees who earned a total of \$1,153,357 in overtime for Fiscal Year 2009, we randomly selected 50 employees who earned a total of \$213,873 in overtime. We then requested from the Department documentation for three random months (July 2008, April 2009, and June 2009) for the 50 employees to substantiate the overtime payments, including timesheets, payroll reports, and overtime reports generated through the City Human Resources Management System (CHARMS). Of the 50 employees, 34 earned overtime during the three-month period reviewed. We documented and compared the overtime recorded in the employees' timesheets to the amount recorded in the CHARMS report and compared them to the 700 Paycycle Event Detail Reports

³ Additionally, we used data from calendar years 2008 and 2009 to conduct analyses of an overtime cap that was based on the calendar year.

generated by the Payroll Management System, which records payroll details including overtime paid earned and paid to each employee. We also verified whether the employees were entitled to earn overtime in accordance with the Citywide Agreement. Furthermore, we verified whether the Department approved the overtime for these employees and whether overtime rates paid complied with the Fair Labor Standards Act.

Finally, we reviewed all excess overtime payments to verify whether the Department had recouped any overpayments as required by Comptroller's Directive #19.

Discussion of Audit Results

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials on December 23, 2010, and discussed at an exit conference held on January 11, 2011. On January 19, 2011, we submitted a draft report to Department officials with a request for comments. We received written comments from the Department on January 26, 2011.

In its response, the Department agreed with our recommendation and stated that it has "received overtime waiver approvals from OLR for the appropriate staff for 2010 and 2011 and will do so going forward." Regarding our concern about inflated pension amounts, the Department stated that "none of the affected employees are expected to retire within the next few years." We note, however, that the retirement system's formula for calculating pension payments is based in part on an employee's highest three consecutive years of earnings, including overtime payments, irrespective of an employee's retirement date.

The Department's full response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The Department generally complied with the rules governing the authorization of overtime except for those addressing the overtime cap. As part of the Department's compliance, we found that Department officials performed multiple steps and reviews before overtime for eligible employees was authorized. The Department has satisfactory internal controls for separating duties and monitoring an employee's work hours. However, we found that the Department did not comply with the Citywide Agreement's overtime cap, which precludes certain employees from obtaining payments for overtime. As a result of not complying with the cap and not obtaining required waivers, the Department paid 21 employees for inappropriate overtime totaling \$82,954 in calendar year 2009, as discussed in the following section.

Overtime Cap Exceeded

The Department improperly paid 21 employees overtime payments totaling \$82,954 in calendar year 2009. Of the 21 employees, the six sampled employees were paid for 572 hours of overtime totaling \$30,862. The overtime was paid even though the annual salaries of the employees exceeded an overtime cap established by the Citywide Agreement and Office of Labor Relations Interpretive Memorandum #100, which states that an "overtime cap for employees subject to the overtime provisions of the Citywide Agreement shall be . . . \$74,079."

The Interpretive Memorandum further states that:

"When an employee's annual gross salary rate in effect on the date that overtime is performed, plus all overtime, differentials and premium pay paid during the calendar year to date, is higher than the applicable cap amount set forth above, such employee shall no longer be eligible to receive cash payment for such overtime, except as may be required pursuant to the Fair Labor Standards Act or authorized pursuant to an overtime cap waiver issued by the Office of Labor Relations, and shall instead receive compensatory time at the rate of straight time for all authorized overtime."

Moreover, the Department did not obtain required waivers from the Office of Labor Relations for the 21 employees. After advising Department officials about this situation, we were informed that the Department would, in the future, apply for waivers for appropriate employees before authorizing overtime work. We also asked if Department officials would seek to recoup the ineligible overtime payments for the 21 employees. Department officials declined to do so as the stated employees were not responsible for acquiring waivers, and consequently, should not be penalized for the Department's omission.

The Department's practice of paying overtime to employees whose salaries exceed the overtime threshold was not limited to 2009. We found that 25 employees whose annual salaries exceeded the calendar year 2008 overtime cap of \$71,230 earned a total of \$103,851 in excess

overtime.⁴ Overall, the excess overtime paid in calendar years 2008 and 2009 totaled \$186,805. Of this amount, \$172,053 was earned by 16 employees in calendar years 2008 and 2009.

We note that all payments for ineligible overtime are a factor in calculating the pensions of employees who are members of the New York City Employees' Retirement System. The retirement system's formula for calculating pension payments to employees is based in part on an employee's highest three consecutive years of earnings, including overtime payments.⁵ Consequently, inappropriate overtime payments may inflate the value of an employee's pension, which are payable for the remainder of a retired employee's lifetime and could be passed on to a beneficiary.

Recommendation

The Department should:

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

Department Response: "Your one finding and recommendation concerned the receiving of waivers from the Office of Labor Relations. We agree with that recommendation and have received overtime waiver approvals from OLR for the appropriate staff for 2010 and 2011 and will do so going forward."

⁴ Excess overtime payments for calendar year 2008 may include payments for overtime worked in the last two calendar weeks of 2007 that was paid in the beginning of calendar year 2008.

⁵ According to rules governing Tier 4 members of the City's retirement system.



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G. FOSTER MILLS
Managing Attorney

January 26, 2011

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

Re: **Audit Report on Controls over Overtime
Payments at the New York City Law Department
FR10-145A**

Dear Ms. Kim:

Thank you for giving us the opportunity to respond to the above-mentioned draft audit report. Below please find our response to your specific audit finding and recommendation. If you have any questions please contact Paul Inselmann, the Law Department's Director of Audit at (212) 341-3980.

We are gratified that your Office noted the quality of our internal controls for monitoring our employees work hours. As the draft audit pointed out, the Department has satisfactory internal controls for separating duties and monitoring an employee's work hours.

Your one finding and recommendation concerned the receiving of waivers from the Office of Labor Relations. We agree with that recommendation and have received overtime waiver approvals from OLR for the appropriate staff for 2010 and 2011 and will do so going forward.

We note that the employees receiving overtime payments in 2008 and 2009 went through the same stringent internal authorization and payment control process that all Law Department employees go through. These employees performed services in relation to the completion of the Department's mission during hours in which it would have been otherwise difficult to do without disruption to the office operations. Furthermore, in connection with your office's concern that

Ms. H. Tina Kim
Deputy Comptroller for Audit
NYC Office of the Comptroller
January 26, 2011
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this overtime will affect the City's pension liability with respect to these employees, we note that none of the affected employees are expected to retire within the next few years.

Sincerely,



G. Foster Mills

cc: Michael A. Cardozo
Malachy Higgins
Anthony Johnson
Dawn Besthoff
Paul Inselmann