



**STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER**

INVESTIGATIVE REPORT

***ANALYSIS OF LOCAL GOVERNMENT
OVERTIME AND COMPENSATORY TIME
PRACTICES***

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I. Introduction

The Office of the State Comptroller (OSC) has determined that some local governments in New Jersey are granting their high-level executive employees overtime and compensatory time in a manner prohibited by state law. In some cases these officials even padded their salary with an “overtime” rate of pay for working regular hours. Moreover, because the local governing body had not approved the payment of overtime in these instances, the practice was not transparent to the public.

This report details how certain New Jersey local governments are ignoring the requirement of obtaining governing-body approval before awarding their executives overtime and compensatory time. It also shows how the award of compensatory time, although intended to be a cheaper alternative to overtime, actually constitutes a more hidden but no less substantial cost to taxpayers. Lastly, this report illustrates how the award of overtime and compensatory time to executive officials at the local government level frequently is plagued by inadequate or non-existent documentation and poor internal controls, with officials often put in charge of approving their own overtime. At the conclusion of this report, OSC makes recommendations to address the deficiencies we identified.

II. Background

A. Overview of Federal Standards for Overtime and Compensatory Time

The federal Fair Labor Standards Act (FLSA) requires employers to pay overtime compensation to non-managerial employees when they work in excess of 40 hours per week, at an hourly rate of not less than one and one-half times their regular rate of pay. Employers are not, however, required to pay overtime to “executive” or “administrative” employees. Federal law defines an “executive” employee in relevant part as one whose primary duty is management;

who customarily and regularly directs the work of two or more other employees; and who has the authority to hire or fire other employees or whose recommendations as to the job status of other employees are given particular weight. 29 C.F.R. § 541.100(a). An “administrative” employee is one whose primary duty involves non-manual office work directly related to management policies or general business operations and requires the exercise of discretion and independent judgment. 29 C.F.R. § 541.200(a).

All of the employees referenced in this report are either “executive” or “administrative” employees. For ease of reference, this report sometimes refers to them as “FLSA-exempt” or simply “exempt” employees.

Closely related to the notion of overtime is “compensatory time,” through which an employee receives paid time off in return for the performance of overtime work. In 1985, Congress amended the FLSA to permit state and local governments to offer compensatory time as an alternative to overtime. *See* 29 U.S.C.A. § 207(o). In enacting this amendment, Congress intended to prevent undue financial hardship to public employers which might result from paying significant cash overtime to their employees. *Local 889, Am. Fed’n of State Employees v. Louisiana*, 145 F.3d 280, 285 (5th Cir. 1998). In any event, just as with overtime, state and local government entities have no obligation to offer compensatory time to their executive and administrative employees. *See* 29 C.F.R. § 553.28(e).

B. Awarding Overtime or Compensatory Time to Executive Employees Requires an Ordinance

In New Jersey, the setting of salaries and other compensation for local government officers and employees generally must be accomplished through the passage of an ordinance. Any action affecting compensation is a multi-step process that includes the following: the governing body must read the proposed ordinance at a public meeting at least ten days before

final passage; a newspaper must publish its contents or a summary together with a notice of the time and place when it will be considered for final passage; members of the public must be able to comment on the proposed ordinance at the time and place stated in a notice prepared by the municipal clerk; and, ultimately, the governing body deliberates on the proposed ordinance at its next meeting, at which time it may be passed with or without amendments or rejected. *See* N.J.S.A. 40:49-2; N.J.S.A. 40A:5-49; N.J.S.A. 40A:9-165.

With limited exceptions in some forms of local government not relevant here, a municipality lacks the authority to award overtime or compensatory time to an employee where no ordinance authorizing overtime or compensatory time has been passed. *Maltese v. Township of North Brunswick*, 353 N.J. Super. 226 (App. Div. 2002). The primary reason for this requirement is to prevent secretive decisions designed to benefit government employees at the expense of the taxpaying public. *Shalita v. Township of Washington*, 270 N.J. Super. 84, 88-89 (App. Div. 1994).

III. Methodology

Our inquiry into the practice of paying overtime to executive or administrative employees was the product of a referral from the State Department of Community Affairs (DCA). Based on information received from DCA, as well as our own research, OSC developed a list of municipalities and counties in which exempt employees may have received overtime, and we then sought relevant information from those local governments. We specifically sought information from 7 counties and 23 municipalities to determine whether they granted overtime or compensatory time during 2010 or 2011 to non-union exempt employees. For the 14 local governments that responded in the affirmative, we conducted interviews to verify information received and obtained further documentation, including records of overtime payments, time

records, salary information and job descriptions. We conducted this review to determine whether the award of overtime or compensatory time was in compliance with applicable law. We further selected the following three municipalities for a more in-depth review, including interviews with upper management personnel as well as with recipients of overtime and compensatory time:

- The Borough of Wallington has a population of approximately 11,000 people and is located in Bergen County. It is governed under the borough form of New Jersey municipal government by a mayor and a six-member borough council.
- The City of Paterson is the county seat of Passaic County and is the third most populous city in New Jersey, with a population of approximately 150,000 people. The city is governed under the “mayor-council” form of municipal government under the Faulkner Act, with a full-time mayor and a nine-member council.
- The Township of Toms River is the county seat of Ocean County, with a population of approximately 90,000 people. The township similarly has adopted the “mayor-council” form of municipal government under the Faulkner Act, with a full-time mayor and seven council members.

While this review was pending, OSC also received a citizen complaint regarding improper accrual of compensatory time by the former administrator of the Towaco Fire District. The Towaco Fire District is one of three fire districts in Montville, located in Morris County, and covers 7,000 residents. It is governed by a five-member board of commissioners. We commenced an investigation into that matter, which involved a review of meeting minutes and resolutions of the fire district’s board of commissioners, as well as interviews with the former

administrator and members of the board. We ultimately decided to include that matter as part of this larger investigation based on the similarity of many of the pertinent issues.

We provided a draft copy of this report to all local government units mentioned within, including the fire district. We also provided a draft copy of this report to DCA for its review and comment. In preparing this final report, we considered all of the responses we received and incorporated them herein where appropriate.

Many of the responding parties offered justifications for the award of overtime and compensatory time. Some responding parties noted that the additional compensation was incurred as a result of unforeseen, emergent situations stemming from personnel and resource issues. We did not review the validity of such justifications but rather focused on the process of awarding, calculating and recording overtime and compensatory time. Many of these local government entities stated that going forward they will use appropriate procedures for awarding overtime and compensatory time under state law.

IV. Findings

A. Summary of Findings

Ten of the fourteen local entities we reviewed (71 percent) did not have proper authorization to award overtime and/or compensatory time to at least some of their exempt employees. Many of those local governments had not passed the required ordinances for any such employees. As a result, these payments or awards of compensatory time were improper. That being said, the fact that particular employees are mentioned in this report does not necessarily imply that they were derelict in their duties or did not perform work as required, in some cases in response to a genuine emergency.

Executive Overtime

Specifically, notwithstanding the absence of governing-body authorization, the following local governments awarded their executives overtime during the time period from January 1, 2010 to December 31, 2011:

- Hunterdon County
- Borough of Elmwood Park
- City of Paterson
- Borough of Pemberton
- City of Rahway
- Borough of Wallington

While the amounts varied, the total amount of overtime these entities paid their executives without proper authorization and therefore contrary to state law was \$195,039.

OSC further found that some of the improper overtime payments (in Paterson and Wallington) were made to employees for work performed during normal business hours, specifically during Hurricane Irene. For these hours, these executives effectively received 2.5 times their prescribed rate of pay equaling their normal pay plus overlapping overtime.

Executive Compensatory Time

Similarly, our investigation revealed that the following local governments awarded their executives compensatory time during this period without having clear and explicit governing-body authority to do so and sometimes in direct contradiction to their own adopted policies and procedures:

- Hunterdon County
- Borough of Elmwood Park

- Township of Fairfield (Cumberland County)
- City of Garfield
- City of Northfield
- City of Paterson
- Borough of Pemberton
- City of Rahway
- Township of Toms River
- Borough of Wallington

In total, the above localities improperly awarded their executives more than 4,000 hours of compensatory time during the survey period. It was particularly inappropriate for these managers to receive compensatory time since that benefit originally was intended to be an alternative to cash-strapped local governments paying overtime to non-managerial employees.

Moreover, the use of these compensatory hours resulted in the accumulation of vacation and sick time that most likely would have been expended, because the employees used compensatory hours instead of using the other leave time. Such unused sick and vacation time is typically compensable to the employee upon his or her departure. Although state law limits the amount of vacation time that can be accumulated and the extent to which sick time can be converted into cash upon retirement, OSC found local governments using the compensatory time mechanism to avoid these restrictions, thereby affording departing executives lucrative severances. Thus, a mechanism that was intended to protect and conserve local resources was instead transformed into a lucrative fringe benefit for high-level officials, perverting the original intent behind the creation of compensatory time.

OSC further found that the award of overtime and compensatory time to exempt employees frequently was plagued by shoddy recordkeeping and poor controls. The failure to provide public notice and obtain governing-body approval for the decision to award these benefits in the first place may have contributed to the lack of effective oversight detailed in this report.

B. Local Governments are Failing to Abide by Legal Requirements in Awarding Executives Overtime and Compensatory Time

As noted above, a large percentage of local governments in our review did not abide by state law or violated their own policies in providing overtime and compensatory time benefits to their exempt executive employees. Some specific examples of the deficiencies we identified are discussed in detail below.

1. Wallington

Two high-level officials in the Borough of Wallington improperly received overtime in our review period. One of them was the borough administrator, who received \$19,622 in overtime, representing 195.5 hours of work or roughly 10 percent of his salary over the two years we examined. The administrator approved and calculated his own overtime. Without council approval, the administrator based the rate of overtime he received on an inapplicable union contract between the borough and non-managerial workers in its public works department (DPW). That contract stipulated receipt of time and one-half for work in excess of eight hours per day, double time for holidays, and double time and one-half for Sundays.

As justification for his receipt of the overtime, the administrator referred OSC to a resolution passed by the borough council in 2005. That resolution allowed him to receive a stipend “for any snow plowing and/or water/sewer emergencies at an annual hourly rate which shall be set forth and determined pursuant to his regular salary.” However, the reference to

“regular salary” is contrary to the notion that the resolution authorized payment beyond his regular rate of pay. Further, the council minutes specifically stipulate that “regular salary” meant “non-overtime.” The administrator ultimately stated in justification of the overtime that he does not “work for free.”

The administrator claimed that he incurred the overtime by driving a snow plow during storms and responding to water emergencies by “going into a hole” to make repairs when an insufficient number of DPW workers were available for the emergency. However, records provided to OSC by Wallington contained minimal justification, if any, for these extra hours. The administrator stated to us that time cards maintained by DPW could verify the overtime, but those records had been discarded, contrary to state records retention requirements. The administrator was responsible for recording and approving his own overtime, raising further questions about the appropriateness of his pay.

The other executive who improperly received overtime without enactment of an ordinance was Wallington’s part-time code official, who also worked for two other municipalities. Wallington paid the official \$10,683 in overtime, variously calculated at time and one-half, double time, and double time and one-half for his work as a result of Hurricane Irene. The payments represented nearly one-third of his regular borough salary for the entire year. The code official stated to us that while he initially was not aware that he would receive overtime for his work in Wallington during Hurricane Irene, the borough’s treasurer encouraged him to submit for overtime as police and DPW employees had done, since the federal government would reimburse Wallington for 75 percent of all costs relating to the cleanup. As explained in more detail below, however, the availability of reimbursement by a federal agency does not provide a basis to receive overtime in the absence of proper governing-body approval.

Moreover, a large portion of the extra time the code official reported working in Wallington overlapped with time he was scheduled to work for his two other municipal employers. He continued to receive the same paycheck from these other municipalities, so for those portions that overlapped he received both his regular pay and one and one-half times his Wallington salary, or two and one-half times his normal rate of pay.

After receiving a draft of our report, the Wallington borough council passed a resolution on December 2, 2013 stating that it shall not pay overtime or award compensatory time to executive or administrative employees who are FLSA-exempt. However, the resolution further noted that in the event the governing body desired to pay such an employee overtime or compensatory time, it could do so using the mechanism of either an ordinance or resolution. While commending the borough for taking steps to end the practice of awarding these benefits to executive employees without council approval, we note that only an ordinance would be effective for such purpose under N.J.S.A. 40A:9-165.

2. Paterson

During 2010 and 2011, Paterson granted non-union exempt employees more than \$65,000 in overtime. They also used or were paid out for more than 150 hours of compensatory time worth more than \$8,000. The city council never approved these payments. After the council became aware of overtime payments related to Hurricane Irene, it conducted multiple public hearings and ordered such employees to repay those amounts to the city. The mayor did not cash the check he received and his cabinet has since reimbursed the city for overtime related to Hurricane Irene. Only the business administrator (BA) has agreed to reimburse the city for non-hurricane-related overtime.

All of the overtime earned by these non-union exempt employees was calculated using the structure set forth in Paterson's union contract with white-collar supervisory employees. Specifically, the city paid them one and one-half times their regular hourly rate for any hours worked in excess of 40 hours per week. For example, the BA received approximately \$15,376 for approximately 115 hours of non-hurricane-related overtime in 2011. When this sum is added to his hurricane-related overtime, the total amount of overtime received by the BA in 2011 represented more than 20 percent of his salary for that year.

The BA stated to us that some of the non-hurricane overtime was earned in his capacity as Paterson's affirmative action officer, a role he began in March 2011. He further stated that he also sought overtime for activities related more specifically to his role as BA, such as attending council meetings, and that he did not differentiate between the two roles for these purposes. Moreover, he documented and approved his own overtime without oversight by any other official.

Similarly, the DPW director in Paterson told OSC that sometime after he started working for the city in September 2010, another DPW employee informed him that he was eligible for overtime for responding to snow storms and other emergency events. The director further stated that the city's personnel office later confirmed that his predecessors had received overtime for responding to emergencies. As a result, the director began seeking overtime payments. He approved his own overtime, receiving \$18,147 for 247 hours in 2010 and 2011.

3. Toms River

OSC's investigation found that four department heads in the Township of Toms River were awarded hundreds of hours of compensatory time during our review period. In some cases,

compensatory time was awarded in a manner that was inconsistent with the township's formally adopted employee handbook prohibiting such awards.

There was no ordinance in Toms River during the time period we reviewed that specifically allows executive employees to earn compensatory time. Instead, part of an ordinance passed in the 1970s regarding the general subject of overtime states, "Compensatory time may be possible by department agreement." Another section of the Toms River municipal code, however, specifically provides that "[d]epartment heads shall be exempt employees for purposes of the Federal Labor Standards Act." A sensible reading of the two ordinances together supports the conclusion that the subsection allowing the possibility for employees to earn overtime by department agreement applies only to those employees considered non-exempt, i.e., those employees who are not executive or administrative. In the absence of an ordinance specifically granting compensatory time to Toms River executives and managers, the certain high-level employees we found who are receiving compensatory time benefits are doing so in a manner that is not transparent to the public.

One executive employee we found receiving compensatory time benefits in Toms River is its Business Administrator. The municipal council hired the BA by way of a resolution adopted on July 28, 2009. The resolution did not make any reference to the compensatory time benefits that were to be included in the BA's contract or to the contract itself. That contract, executed by the mayor and BA, explicitly prohibited overtime but permitted the BA "to accumulate and utilize compensatory time on an hour-for-hour basis for hours worked over forty (40) hours in any work week." It further provided that, in the event that the township did not renew his contract at the end of five years, he would be paid for all accumulated and unused compensatory time.

Awarding these benefits to the BA in his contract, even assuming the contract was attached to the resolution approved by the council, did not meet the transparency requirements of the statute. A resolution does not share the same features of transparency as an ordinance in that it “may be introduced and passed in a few minutes, without the knowledge of any one except those present, while an ordinance is a deliberative process requiring notice to the public, a reading at more than one meeting, and publication in the press before final action.” *Shalita*, 270 N.J. Super. at 88 (citations and quotations omitted). Because the BA’s contract was approved via a resolution, it was not subject to the same level of transparency or scrutiny it would have been had it been approved by ordinance.

Subsequent to the hiring of the BA, the council adopted an employee handbook in June 2010, which very specifically provided that “[e]xempt employees, salaried employees, and Department Heads will not be compensated with overtime and compensatory time.” No exception was made for terms afforded to the BA; he continued to accrue compensatory time despite this clear prohibition on others receiving the same benefit.

On December 19, 2011, the mayor and the BA executed an addendum to the BA’s employment contract which expanded the circumstances under which the BA could receive the benefit of his accumulated compensatory time. Specifically, it permits him to utilize such time in the form of paid leave if he resigns, retires in good standing or is terminated, up to a maximum of 1,180 hours – potentially resulting in more than six months of such leave. In light of the BA’s salary – \$172,600 in 2010 and \$190,388 in 2011 – this is a potentially sizeable allowance. There is no evidence that the council reviewed or approved the contract addendum during the period of our review.

As noted above, the award of compensatory time to exempt and executive-level employees in Toms River was not limited to the BA. In fact, we found one example of a department head being granted 40 hours of compensatory time several months after the formal adoption of the employee manual prohibiting the same. After our review commenced, the BA supported such awards by drafting a memorandum ostensibly justifying the practice of permitting certain department heads to earn compensatory time of up to one workweek in any given calendar year. This practice, first documented in that October 2012 memorandum, is in direct contradiction to the specific language contained in the June 2010 Toms River employee handbook.

After a draft copy of this report was shared with Toms River, the BA's contract was amended on January 7, 2014. The amendment eliminated the BA's allowance of compensatory time. Instead, the amendment changes the characterization of the compensation the BA will receive upon termination or non-renewal of his contract from compensatory time to 180 days of guaranteed "severance." The mechanism by which the BA's contract was amended, through a resolution and not an ordinance, still did not meet the transparency and advance public notice requirements of the statute. The township did, however, subsequently comply with the statute with respect to other non-union, executive-level employees besides the BA by passing an ordinance permitting them to accrue and use a maximum of one workweek of compensatory time annually under limited circumstances, subject to the BA's approval. We encourage the township to similarly modify the employee handbook to resolve any inconsistencies with the new ordinance.

C. Use of Federal Reimbursement to Justify Overtime

Several municipalities took the position that the availability of federal reimbursement for certain expenses, such as during an emergency, justified the payment of overtime to executive employees. We examined the validity of that argument, and found that the prospect of receiving such reimbursement does not transform otherwise unlawful overtime payments into appropriate expenditures.

In order for federal reimbursement to a local government to be “allowable” under federal law, the cost must “[b]e authorized or not prohibited under State or local laws or regulations.” 2 C.F.R. pt. 225, app. A, section C(1)(c). To the extent that the payment of overtime to executive employees is not approved by a municipal council in instances in which such approval was required, it is prohibited, *see Maltese v. Township of North Brunswick*, 353 N.J. Super. 226, and therefore not eligible for reimbursement by a federal agency.

Circumstances in Paterson are illustrative of this point. The flooding that Paterson experienced in the aftermath of Hurricane Irene in September 2011 led to a shutdown of most operations of city government. A few high-level executive employees, including the mayor, his chief of staff, the BA, and the directors of the departments of human services, community development and public works, were called to address the emergency. These executives all received overtime generally calculated at a rate of 1.5 times their regular salary for each hour they worked, even if the hours fell within their normal work day. Because they also continued to receive their regular salary for these hours, they ultimately received 2.5 times their regular pay.

The city authorized these overtime payments with the intention of seeking reimbursement for 75 percent of these amounts from the Federal Emergency Management Agency (FEMA). However, no ordinance justified the payment of the extra compensation in these circumstances.

Ultimately, the city dropped its plan to seek federal reimbursement for the overtime payments to these exempt employees. According to the city, it dropped these plans in response to guidance it received from FEMA regarding the lack of a local ordinance.

Separately, Paterson's DPW director received overtime in connection with his administration of an Energy Efficiency and Conservation Block Grant from the U.S. Department of Energy (USDOE). Specifically, in 2011, he received overtime for working approximately 12 hours every two weeks from July 10 through August 21, for a total of 50 hours. The amount of overtime he received for his work on the grant was approximately \$3,584.

The city informed OSC that it plans to seek reimbursement for these overtime payments from the grant funds. However, because no Paterson ordinance authorized payment of overtime to the DPW director, the payment was contrary to state law and therefore not reimbursable. The USDOE confirmed that the overtime was not reimbursable under its grant. In short, where overtime payments to public employees are not authorized, neither local nor federal taxpayers should have to fund them.

D. The Hidden Costs of Compensatory Time

A recurring issue throughout this investigation was the frequency of compensatory time being accrued by exempt executives, in addition to or in lieu of overtime. Eleven of the 30 local government units in our survey allowed their exempt executives to use such compensatory time during 2010 and 2011. This dynamic is particularly ironic since these management officials had no statutory right to overtime in the first place, and compensatory time was designed to alleviate the financial hardship to governments required to pay overtime to non-exempt employees. The use of compensatory time by these officials reflects an additional cost to taxpayers which is exacerbated by the lax approval requirements making it more difficult to determine the true cost.

In addition to the lost hours, the manner in which certain local governments awarded compensatory time to their executives undermines state law enacted in 2007 and 2010 to limit cash payouts to local government employees. That legislation prohibits local government employees from accruing and carrying over more than one year's worth of vacation leave and imposes a \$15,000 cap on compensation for unused sick leave upon retirement. The cap on sick leave and the limit on accrued vacation leave apply to all employees hired by local governments on or after May 21, 2010. *See* N.J.S.A. 40A:9-10.4, -10.5; N.J.S.A. 11A:6-19.2. Pursuant to the 2007 legislation, those same restrictions already applied to accrual of leave time by high-level employees whose hiring or appointment requires approval of a governing body, such as a BA or department heads. *See* N.J.S.A. 40A:9-10.2, -10.3; N.J.S.A. 11A:6-19.1; DCA, *Local Finance Notice 2008-10* (Apr. 28, 2008).

Compensatory time can be used to avoid these restrictions. For example, notwithstanding the statutory limitations, the contract we reviewed between Toms River and its BA permitted him to accumulate up to 29 weeks of compensatory time for any reason, which he can use as needed or save for paid leave at the end of his employment. Allowing officials to accumulate such large amounts of compensatory time, which can then either be used as needed or ultimately received in the form of paid leave, serves as a means to avoid the statutory caps on payments to employees leaving local government service.

Additionally, the BA's contract allowed him to use compensatory time in lieu of vacation and personal days, thereby enabling him to conserve those vacation and personal days and reach the statutory maximum for payout faster than other employees. In fact, during our survey period the BA used a total of 20 days of compensatory time, allowing him to keep 20 days of vacation or sick time for future payout.

Finally, the BA's contract allows him to carry over up to two years of vacation leave, directly contrary to N.J.S.A. 40A:9-10.3, which only permits carry-over of one year of such leave, and further permits him to convert any unused vacation and personal time into monetary compensation with the mayor's approval. Permitting the BA to receive vacation leave payouts means that he is potentially able to receive the benefit of more than one year of accumulated vacation leave, thereby circumventing the one-year limit set by statute.

Paterson officials used compensatory time in another creative way to avoid the statutory limits on accumulating vacation time. Specifically, the BA allowed the city's budget officer to convert unused vacation days that would be lost if not used by the end of the year into compensatory time, which he could then carry over into the subsequent year. Because of this unwritten arrangement, the budget officer was able to use 16 days of leave time in 2010 and eight days in 2011 that otherwise would have expired.

Similarly, circumstances we reviewed in the Towaco Fire District present a stark example of how poor internal controls over the award of compensatory time can have adverse financial consequences for taxpayers. In early 2011, the fire district's administrator expressed his intention to retire. On March 7, 2011, he sent an email to the board of commissioners asserting that the board owed him approximately \$120,000 for "382 days banked." He subsequently stated to the board that the 382 days were comprised of 250 sick days and 132 vacation days that he accrued during his employment.

Our investigation revealed that the reason the administrator was able to accumulate so many sick and vacation days was because of his accrual and use of compensatory time. A 1990 board action provided that the administrator would receive compensatory time for attending designated meetings of the board "occurring outside normal work schedule," which was

stipulated to be Monday through Friday, from 8:00 a.m. to 4:00 p.m. The administrator admitted to OSC that he nevertheless granted himself compensatory time for matters other than attending after-hours board meetings, such as “training events” and investigating fires in his capacity as a fire official.

Despite this very limited authorization, from 1997 through 2011 the administrator awarded himself over 222 days of compensatory time, of which he utilized 138.5 days instead of exhausting other leave time. No other fire district official had confirmed or verified his working of additional hours or had approved his use of compensatory time. Indeed, when questioned by OSC, fire district officials expressed surprise that the administrator had granted himself such a large amount of compensatory time.

Records also disclose that from 1996 through 2008 the administrator did not take a single sick day, despite having suffered a significant medical condition in 2006 with recurring symptoms thereafter. Furthermore, he awarded himself compensatory time at a rate of time and one-half, even though the 1990 resolution did not authorize any such enhanced rate.

The fire district ultimately agreed to pay the administrator \$100,000 out of the \$120,000 he sought (which actually was more than required under the statutory sick and vacation time caps). The fire district’s failure to monitor the administrator’s accrual and use of compensatory time led directly to the large settlement, having allowed him to inflate his claim of unused sick and vacation leave.

V. Recommendations

1. Local governments are reminded that they are not required to pay their FLSA-exempt executive or administrative employees overtime or compensatory time. If they nevertheless choose to do so, they must comply with New Jersey law. Specifically, under state

law, the governing body (council, township committee, commission or board of freeholders) must pass an ordinance and permit public comment before granting overtime or compensatory time to exempt employees. There are limited exceptions to this requirement in some forms of New Jersey local government and legal counsel should be consulted in this regard. Governing bodies may opt to follow the rules used for state employees and explicitly prohibit their highest-level and highest-salaried employees (such as department heads) from receiving overtime or compensatory time under any circumstances, but permit those benefits for other exempt employees in limited circumstances such as emergencies. *See* N.J.A.C. 4A:3, app. A; N.J.A.C. 4A:3-5.7(d). Regardless of the standard they adopt, local governments must adhere to the open, public process set forth in state law. The local governments referenced in this report for having made payments contrary to law should consult with counsel regarding their ability to recover these funds.

2. DCA should consider promulgating regulations or issuing guidance which sets forth appropriate criteria and time limits for the accumulation and use of compensatory time by exempt executive employees when such a benefit is in the public interest.

3. If a local governing body decides to propose an ordinance awarding overtime or compensatory time to its exempt executive employees, it should do so in clear terms so that the public has a meaningful opportunity to weigh in. At a minimum, the proposed ordinance should specify which positions are entitled to the additional benefit and explain the circumstances under which it can be awarded. For example, the Township of West Deptford has an ordinance specifically providing that the treasurer, department heads and township solicitor – who are not eligible for overtime – are eligible for compensatory time for working “in excess of their normal

workday or workweek.” It further provides that other officials must approve their earning and usage of compensatory time in advance.

4. Information about the award of overtime and compensatory time to exempt local government employees should be made more readily available to the public. State law requires the adopted budget of each local government to be made available online in a “user-friendly” summary format using plain language. See N.J.S.A. 40A:5-48; N.J.S.A. 40A:4-10. To implement this statute, DCA previously has proposed creating an electronic reporting platform for municipalities to report their comprehensive budget data and for displaying that information in a comprehensible fashion. See *User-Friendly Budget for Municipalities, Proposed New Rules: N.J.A.C. 5:30-19*, 44 N.J.R. 3023(a) (Dec. 17, 2012). DCA should consider requiring all local governments to report the value of any overtime or compensatory time they grant to exempt employees as part of this “user-friendly” budget.

5. If a local government unit voluntarily decides to confer the benefit of overtime or compensatory time upon its exempt employees, it should insist upon proper documentation and controls. Proper documentation requires, at a minimum, accurate timekeeping records and detailed prior written justifications for additional compensation. In addition, under no circumstances should local government executives approve their own time for purposes of receiving overtime pay and compensatory time. Further guidance in this regard can be found in OSC’s *Internal Control Guide*, available on our website.

6. In their legislative efforts to rein in abuses concerning accumulation of sick and vacation time, state policymakers should consider the effects of compensatory time and eliminate the ability of public officials to use compensatory time as a means to avoid the legislative caps in place concerning accumulated leave time.