



**Audit of County Adherence to New
York State Labor Law § 162
March 30, 2021**

By Onondaga County Comptroller Martin D. Masterpole

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SECTION I

BACKGROUND AND EXECUTIVE SUMMARY

Background

New York State Labor Law § 162 sets forth the required meal periods for employees in New York State. It contains different requirements for factory and non-factory workers and covers all private and public sector employers and their employees who work in New York State (<https://www.nysenate.gov/legislation/laws/LAB/162>).

Though it lacks specific language, many interpret that New York State Labor Law § 162 as applying to all employees in New York—from collectively bargained groups to management confidential employees, from entry level employees to top management—unless there is a special contract or provision from the NYS Department of Labor to allow for a less than thirty minute lunch period. We are unaware of Onondaga County having such a contract or provision in effect.

In addition to New York State Labor Law § 162, there is County-specific policy for employees documenting their daily lunch break. A 2009 memo from the County's Kronos Executive Oversight Committee to Department Heads, Personnel Officers and Payroll Clerks established KRONOS policy for County employees to record and document their work day (see Section IV, Attachment B). Per the memo, all employees except elected officials, department heads and their true deputies need to account for their time in KRONOS. All other employees, including management confidential and salaried employees, need to either swipe or use another approved form of time entry. The memo also states that for these employees a lunch break is mandatory, except for those in departments with 24/7 shift operations whose employees are paid for their lunch break and are not permitted to leave their facility.

Not allowing an employee their meal break can be a violation of the law and result in penalties and/or fines. Employees whose time records do not indicate they are taking a lunch break could potentially bring a claim against the County stating they were not offered the meal break in accordance with the law and best practices. Lastly, not documenting their lunch break allows some County employees to accrue Compensation Time Earned (CTE), Overtime (OT) and Fair Labor Standards Act (FLSA) when they should not be. All are very undesirable, yet very avoidable, financial scenarios.

The County can easily document its adherence to New York State Labor Law § 162 for the majority of its approximately 3,000 employees by having them use the County's KRONOS Workforce Management time and attendance software each day for one of its most basic intended purposes--the tracking of employee attendance and the monitoring employee absenteeism and leave time to

ensure a full day of work is properly recorded. To record their start time, lunch time and end time each day in KRONOS, employees can manually swipe their County ID badge through one of the KRONOS kiosks located in County buildings. There are also options for employees to “timestamp” in/out using software that can be loaded onto their computer or “tele-time” in/out using a telephone-based tool. One other option is to setup an automation in KRONOS that will “auto deduct” the appropriate amount of time each day for an employee’s lunch. This option can be of particular use to departments with special circumstances because it negates the need for an employee to use any of the manual time tracking methods.

New York State has created law and Onondaga County has created policy for employees documenting their lunch break each work day of six hours or more. The County has invested significant financial resources for a technology-driven means for complying with that law and policy. By using the technology and following the policy, a high percentage of the County workforce’s adherence to New York State Labor Law § 162 would be easily documented and stored should the County be audited or sued. Using the technology and following the policy would also reduce costs for CTE, OT and FLSA time earned by employees each pay period and annually.

Executive Summary

During the course of the audit we noted the following:

- 1) The County cannot fully support its compliance with New York State Labor Law § 162 as many County employees do not record their lunch break in KRONOS.
- 2) Many departments are not in compliance with the County-wide policies outlined in a May 14, 2009 memo from the KRONOS Executive Oversight Committee related to time clock procedures for County employees.
- 3) Employees are earning CTE, OT or FLSA when indicating they worked though their lunch break.
- 4) There is inconsistent treatment within departments relating to lunch break durations, automatic deducted lunch breaks or amount of CTE, OT or FLSA earned when not recording a lunch break.
- 5) Payroll clerks’ time is being used inefficiently when they have to enter manual adjustments for those employees not recording a meal break and/or claiming to have worked through lunch or worked outside of their scheduled hours.

Recommendations:

- A) County Administration should review existing policy and then implement and enforce standard procedures for the use of the KRONOS Workforce Management time and attendance software by departments.*
- B) County Administration should consider mandating automatic punches to record a meal break for certain unique work situations in which traditional methods for an employee to document their time worked are not available to them.*
- C) Each County department should select and adhere to an Administration-approved method for their employees (or category of employees where appropriate) to use KRONOS so as to ensure adherence to New York State Labor Law § 162.*
- D) County departments should ensure consistency of KRONOS use across the same titles and jobs of similar performance for lunch breaks.*
- E) County departments should put in place measures that will reduce the inefficient use of payroll clerk's time.*

SECTION II

SCOPE AND METHODOLOGY

Scope and Objectives

The scope of this audit concentrated on departmental procedures relating to employee's time punches and its effect on their respective established schedules and subsequent earning of Compensation Time Earned (CTE), Overtime (OT) and Fair Labor Standards Act (FLSA).

Our objectives for this audit were to determine if:

- The County was in compliance with New York State Labor Law § 162.
- Employees were effectively using the KRONOS system.
- Departments follow established procedures relating to employees recording their time.
- Inefficiencies exist as to the use of manual overrides or entries.
- Employees with comparable working environments are handled similarly in the system.

Methodology

In order to complete our objectives we:

- Reviewed New York State and Onondaga County laws, policies, procedures and regulations.
- Conducted interviews with managers and staff related to the departments payroll.
- Selected a sample of employees from six departments and researched their KRONOS activity.

Departments included:

1) Water Environmental Protection (WEP)
2) Emergency Communication (E911)
3) Community Development (CD)
4) Elections Board (BOE)
5) Health Department (HD)
6) Sheriff

- Obtained an understanding of employees working environment and job responsibilities.
- Inquired of the Personnel Department of any written documentation relating to time clock procedures.
- Applied rate of occurrences of never, occasionally, often and very often as defined by the Research of Higher Education article as noted on page 7 of this report.

SECTION III

FINDINGS AND RECOMMENDATIONS

New York State Labor Law § 162 sets forth the required meal periods for employees in New York State. It contains different requirements for factory and non-factory workers and covers all private and public sector employers and their employees who work in New York State. The law (<https://www.nysenate.gov/legislation/laws/LAB/162>) reads as follows:

1. Every person employed in or in connection with a factory shall be allowed at least sixty minutes for the noon day meal.
2. Every person employed in or in connection with a mercantile or other establishment or occupation coming under the provisions of this chapter shall be allowed at least thirty minutes for the noon day meal, except as in this chapter otherwise provided. The noon day meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift of more than six hours which extends over the noon day meal period is entitled to at least thirty minutes off within that period for the meal period.
3. Every person employed for a period or shift starting before eleven o'clock in the morning and continuing later than seven o'clock in the evening shall be allowed an additional meal period of at least twenty minutes between five and seven o'clock in the evening.
4. Every person employed for a period or shift of more than six hours starting between the hours of one o'clock in the afternoon and six o'clock in the morning, shall be allowed at least sixty minutes for a meal period when employed in or in connection with a factory, and forty-five minutes for a meal period when employed in or in connection with a mercantile or other establishment or occupation coming under the provisions of this chapter, at a time midway between the beginning and end of such employment.
5. The commissioner may permit a shorter time to be fixed for meal periods than hereinbefore provided. The permit therefor shall be in writing and shall be kept conspicuously posted in the main entrance of the establishment. Such permit may be revoked at any time.

In addition to New York State Labor Law § 162, there is also Onondaga County-specific policy for employees taking and documenting their daily lunch break. In May 2009, a group of high level County administrators designated as the Kronos Executive Oversight Committee issued a memo to Department Heads, Personnel Officers and Payroll Clerks related to KRONOS use by County employees and the recording and documentation of their work day. The memo, entitled “Kronos Policies”, outlined which County employees should be using KRONOS each day and how (Exhibit B). Specifically, it stated:

1. “Everyone except elected officials will have their time accounted for by the Workforce Central system. Department heads and their true deputies are exempt from swiping. Everyone else, including all m/c employees and salaried employees will either swipe or use some other approved form of time entry.”
2. “We will continue to require the same accountability for lunch as with prior manual time recording in accordance with work rules that require punching in and out for lunch and personal business. Exemptions to lunch punching are limited to those 24/7 shift operations whose employees are paid for their lunch break and are not permitted to leave their facility.”

In parts of this report the terms below are used to describe employee habits when exhibiting certain behaviors such as not swiping for a lunch break or earning CTE, OT or FLSA. The following is a guide for how those terms are used and should be interpreted:

Never	Zero times per month	Zero times per year
Occasionally	Approx. once every 2-3 mos.	3 - 6 times per year
Often	Approx. once or twice/mo.	12 - 24 times per year
Very Often	Approx. once a week	50+ times per year

Source: Research in Higher Education <https://www.jstor.org/stable/40195500?seq=1>

Finding 1:

The County cannot fully demonstrate its compliance with New York State Labor Law § 162 as many County employees who are required to track their time in KRONOS do not record their daily meal break when working six hours or more.

- We tested 93 employees from six departments. 79 of the 93 employees often (see description above) did not clock in and out for lunch and thus, did not show a recorded lunch break. This gives the appearance that the County is not abiding by New York State Labor Law § 162. Breakdown of the six departments is as follows:

- ◆ WEP 27 out of 29 tested
- ◆ E911 11 out of 11 tested
- ◆ Community Development 12 out of 12 tested
- ◆ Health Department 4 out of 14 tested
- ◆ BOE 0 out of 2 tested
- ◆ Sheriff 25 out of 25 tested

Recommendation A: *County Administration should review existing policy and then implement and enforce standard procedures for the use of the KRONOS Workforce Management time and attendance software by departments.*

Finding 2:

Many departments are not in compliance with the County-wide policies outlined in a May 14, 2009 memo from the KRONOS Executive Oversight Committee related to time clock procedures for County employees.

Recommendation B: *County Administration should consider mandating automatic punches to record a meal break for certain unique work situations in which traditional methods for an employee to document their time worked are not available to them.*

Finding 3:

Employees are earning CTE, OT or FLSA when indicating they worked though their lunch break.

- 59 out of the 93 employees tested in six departments who are required to track their time in KRONOS often or very often did not record a meal break and subsequently earned CTE, OT or FLSA.
 - ◆ WEP 11 out of 29 tested
 - ◆ E911 9 out of 11 tested
 - ◆ Community Development 10 out of 12 tested
 - ◆ Health Department 4 out of 14 tested
 - ◆ BOE 0 out of 2 tested
 - ◆ Sheriff 25 out of 25 tested
- We initially tested four employees in Community Development (CD) who are required to track their time in KRONOS:
 - ◆ All four of those employees often or very often earned CTE, OT or FLSA when not taking a lunch break.
 - ◆ Due to this high frequency (100%) we tested the other eight employees required to track their time in KRONOS. Seven of the eight did not track their time and earned CTE, OT or FLSA.
 - ◆ In total, 11 of the 12 employees in Community Development are required to track their time in KRONOS often or very often do not take lunch and earned CTE, OT or FLSA.
- A 2014 Comptroller's Office audit entitled "Compensatory Time and Related Paid Time Off" reported that similar patterns of KRONOS use were noted and a recommendation was made (see below). This audit indicates that since the 2014 audit's findings were shared, no effective actions have been taken by departments or County administration to assure documented compliance with New York State Labor Law § 162.

2014 Compensatory Time and Related Paid Time Off

Finding and Recommendation # 1:

Finding:

During testing it was noted certain employees do not take a lunch on a consistent basis and accumulate compensatory time weekly. While it is recognized employees may work through their lunch with the appropriate permission, doing so daily is an abuse of this privilege. The assertion these employees do not stop working to eat lunch is not likely, yet they are accruing compensatory time on a constant basis.

Recommendation:

The privilege of working through lunch should be monitored closely not given blindly. Controls should be put in place to ensure abuse is eliminated and employees only accrue compensatory time when it is absolutely necessary.

Recommendation C: *Each County department should select and adhere to an Administration-approved method for their employees (or category of employees) to use KRONOS so as to ensure adherence to New York State Labor Law § 162 and ensure CTE, OT and FLSA are being accrued appropriately.*

Finding 4:

There is inconsistent treatment of employees of the same title who are required to track their time in KRONOS relating to lunch break durations, automatically deducted lunch breaks and/or the amount of CTE, OT, FLSA earned when not recording a lunch break.

- We noted the following related to the five Public Safety Dispatch employees tested for E911:
 - ❖ One employee very often did not record a lunch break and did not often earn CTE, OT or FLSA as compared to the four others with the same title who often or very often earned CTE, OT or FLSA when they did not record a lunch break.
 - ❖ One employee had an auto deduct for a lunch time of .5 hour for a scheduled shift of 2:45pm – 11pm. New York State Labor Law § 162 states non-factory employees who work “for a period or shift of more than six hours starting between the hours of 1:00 p.m. and 6:00 a.m., shall be allowed 45 mins.” Due to this employee’s shift, the auto deduct should have been .75 hour.
 - ❖ Two employees had an auto deduct for lunch time of .25 hr. Their shifts were scheduled for 6:45am – 3pm and 6:45pm – 3am respectively. Per New York State Labor Law § 162, one employee should have had .5 hour auto deducted and the other should have had .75 hour auto deducted.
 - ❖ One employee had an auto deduct applied inconsistently within pay periods. Sometimes a lunch break was automatically removed and other times it was

not. Regardless of whether the employee worked more or less than their scheduled eight hours per day, KRONOS would automatically clock them in for an eight hour shift.

- We noted the following related to two Stream Mtce. Worker II employees tested for WEP's Flood Control:
 - ◆ One employee had no auto deducts for lunch, didn't swipe, and often earned CTE, OT or FLSA by not recording a lunch break.
 - ◆ The other employee had auto deducts for lunch and did not often earn CTE, OT or FLSA by not recording a lunch break.
- 34 of the 93 employees tested in the six departments have schedules that do not allow for a proper lunch break as determined by their work schedule.

<u>Schedules of Employees Tested that Do Not Allow for Proper Lunch Period</u>		
Department	Title	Amount of Each Title
E911	Public Safety Shift Super	1
E911	Supv of Dispatch Oper	2
E911	Public Safety Dispatch	5
E911	Public Safety Telecomm	1
Sheriff	DS SGT	1
Sheriff	DS (Custody)	9
Sheriff	DS (Police)	7
Sheriff	DS Lieu (Police)	2
Sheriff	DS SGT (Police)	1
Sheriff	DS Captain (Custody)	1
Sheriff	DS SGT (Custody)	2
Sheriff	DS LIEU (Custody)	1
Sheriff	DS (Custody) SP	1
Total		34

Recommendation D: *County departments should ensure consistency of KRONOS use for lunch breaks across the same titles and jobs of similar performance.*

Finding 5:

Payroll clerks' time is being used inefficiently when they have to enter manual adjustments for employees who have not recorded a meal break and/or have worked outside of their scheduled hours.

- 41 of 93 employees tested in the six departments often or very often needed a payroll clerk to make manual changes to their time worked record in KRONOS because the employee did not properly document their workday.
- A Clerk II at WEP had time that was noted as “cancel lunch deduct” in KRONOS almost every day. Approximately half of these notations occurred when the employee left earlier than their scheduled leave time hour and for the other half the employee stayed until their scheduled shift ended, but they occasionally earned CTE time. These cancel lunch deduct actions to the employee’s time record in KRONOS require the time and effort of a payroll clerk. In 2019, the employee had cancel lunch deducts 143 times.
- 17 of 93 employees tested in the six departments often or very often did not work their scheduled hours in KRONOS. This results in payroll clerks having to make adjustments in KRONOS to these employees’ time records. Below is a one month sample of such activity:

<u>Information from KRONOS for January 2019 Only</u>				
<u>Related to the 17 Employees Who Did Not Often Work Their Scheduled Hours</u>				
<u>Department</u>	<u>Title</u>	<u>Number of Days</u>	<u>Days Earned</u>	<u>Number of Necessary</u>
		<u>Worked</u> <u>(6 hrs or more)</u>	<u>CTE, FLSA or OT</u> <u>w/out Lunch</u>	
WEP	Stream Mtce Supr	20	0	52
WEP	Training Officer	20	0	36
WEP	Clerk 2	13	5	45
WEP	Sanitary Chemist 1	11	0	32
E911	Clerk 2	19	1	29
Comm Dev	Housing Rehab Insp	18	14	61
Comm Dev	Housing Program Coord	17	9	47
Comm Dev	Project Coordinator	20	13	70
Comm Dev	Housing Rehab Insp	19	0	53
Comm Dev	Housing Rehab Spec	18	0	35
Comm Dev	Housing Rehab Insp	19	9	66
Comm Dev	Housing Rehab Insp	18	15	59
Comm Dev	Housing Rehab Insp	20	20	76
BOE	Voting Mach Cust	19	0	4
Sheriff	DS Captain (Custody)	19	2	82
Sheriff	DS (Custody)	22	18	135
Sheriff	DS (Custody)	31	14	177
<u>Total</u>				<u>1,059</u>

NOTE: January 2019 had 21 working days

Recommendation E: *County departments should put in place measures that will reduce the inefficient use of payroll clerk’s time.*

SECTION IV

EXHIBITS

EXHIBIT A - page 1 of 5

From: <https://labor.ny.gov/legal/counsel/pdf/meal-and-rest-periods-frequently-asked-questions.pdf>

Meal and Rest Periods Frequently Asked Questions (FAQ)

Labor Law Section 162 sets forth the required meal periods for employees in New York State.

- Factory Workers are entitled to a 60-minute lunch break between 11:00 a.m. and 2:00 p.m. and a 60-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m. and lasting more than six hours.
- Non-Factory Workers are entitled to a 30-minute lunch break between 11:00 a.m. and 2:00 p.m. for shifts six hours or longer that extend over that period and a 45-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m.
- All Workers are entitled to an additional 20-minute meal break between 5:00 p.m. and 7:00 p.m. for workdays that extend from before 11:00 a.m. to after 7:00 p.m.

Section 162 also allows the Commissioner to permit shorter meal periods upon application by the employer and if the Commissioner believes such modifications are warranted by special circumstances.

Who is covered by Section 162 of the Labor Law?

All private and public sector employers and their employees who work in New York State are covered by the law. However, the law contains different requirements for factory workers and non-factory workers.

Who is a factory worker?

Section 162 has different meal period requirements for persons “employed in or in connection with a factory.” A factory includes a mill, workshop, or other manufacturing establishment and includes all buildings, sheds, structures or other places used for or in connection with these establishments. A factory does not include dry dock plants engaged in making repairs to ships, power houses, generating plants and other structures owned or operated by a public service corporation. Any employee who works in or whose primary duties involve the maintenance and/or operation of a factory is a factory worker for the purposes of Section 162 of the Labor Law.

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Where only one employee is on duty, is that employee required to be provided with an uninterrupted meal period?

In some instances where only one person is on duty or is the only one in a specific occupation, it is customary for the employee to eat on the job without being relieved. The Department of Labor will accept these special situations (The “One-Employee Shift” exception) as compliance with Section 162, where the employee voluntarily consents to the arrangements. However, an uninterrupted meal period must be afforded to every employee who requests this from an employer prior to consenting to the arrangement.

To demonstrate that voluntary consent to such one-employee shifts has been given, an employer must explain to the employee that:

- The nature of the industry in which the employer operates necessitates one-employee shifts
- The employee’s meal periods may be interrupted

The employer must then obtain an acknowledgement, preferably in writing, by the employee, either:

- When the employee is hired
- Before the time the employee would be expected to give up his/her uninterrupted meal periods

An employer cannot use mere acceptance of a job or continued employment without objection as an acknowledgement. If an employee works through a meal period due to one-employee shift requirements, the employee must be paid for such meal period. Once an affirmative acknowledgement is given by an employee, it cannot be revoked without a change in circumstances.

Are employees required to be paid for meal period time?

Meal periods that meet statutory requirements are not required to be counted as “hours worked” and employees are not required to be paid for such time. (See answer above for situations in which employees work through meal periods.)

Are ‘brown bag lunches’ permissible in New York State?

“Brown bag lunches” are where employees eat their lunch while listening to a speaker or some sort of presentation. The topics of such lunches may be work-related or not related to work (e.g. related to health and wellness issues, personal finances, retirement). Employees must be allowed an uninterrupted meal period and must be free to leave their work area(s) and engage in other pursuits.

EXHIBIT A - page 3 of 5

If employees are required by their employers to attend such working or brown bag lunches (typically on topics related to work), they do not count as a meal period and must also be counted as time worked. Employees who voluntarily choose to attend such lunches on topics, are receiving a meal period under the law.

May employees consent to not taking a meal period?

The New York State Court of Appeals, New York's highest court, held that, in a situation where there was a collective bargaining agreement that provided for a waiver of statutory meal periods in exchange for additional breaks and meal periods scheduled at other times, employees may waive their rights under the Labor Law. Such waivers must include the following:

- The operational needs of the industry make strict compliance with the meal period provisions impractical
- The waiver was obtained openly and knowingly, absent of duress or coercion, through good faith negotiations
- The employees received a desired benefit through the negotiations in return for such a waiver

The Court of Appeals decision, *ABC Broadcasting v. Roberts*, can be found at 61 N.Y.2d 244 (1984).

Does the Commissioner permit shorter time periods?

The Department will permit a shorter meal period of not less than 30 minutes as a matter of course, without application by the employer, so long as there is no indication of hardship to employees. A meal period of not less than 20 minutes will be permitted only in special or unusual cases after investigation and issuance of a special permit.

How does an employer apply for a shorter time period?

An application may be found on the Department's web site at the following link:

<http://www.labor.ny.gov/formsdocs/wp/ls284.pdf>

May an employer require employees to remain at work during meal breaks?

There is nothing in the Labor Law that requires that an employee be permitted to leave the work premises for the meal period, so long as the employee is completely freed from duties during the meal period. Employees must be completely relieved from duty for the purposes of providing meal periods and an employee is not relieved if he or she is required to perform any duties, whether active or in-active, during that period. While employees may remain at their desk or in their work area during a meal break, they must be effectively relieved of their duties during that

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period. In general, employees who are required to remain at their desk or workstation during meal periods are not considered to be completely relieved of their duties.

It is important to note, however, the one-employee shift exception discussed above allows for a general exception to this rule.

May employers round starting and stopping time for counting meal period requirements?

Yes. Rounding of time is a practice where employers will round the beginning and/or end of a shift or meal period to an interval. For example, rounding occurs when an employee arrives at work at 8:02 and the time records note that the employee arrives at 8:00. The Department follows the principles set forth in federal regulations (29 CFR §785.48(b)) with regard to the rounding of time. That regulation recognizes that rounding is commonly accepted in industry at intervals ranging from 5 to 15 minutes and permits such rounding. Extending this rounding regulation to the meal period requirements is proper, so long as rounding of starting and stopping time for the counting of meal period requirements does not, over a period of time, result in a failure provide employees with the required meal periods. In short, rounding of time is permissible as long as it does not result in employees losing time.

Must employees be paid for breaks and rest periods?

While the Labor Law does not require that employers provide rest periods of short duration, if they are provided to or taken by employees, they must be counted as working time. The Department follows Federal Regulation 29 CFR §785.18 which provides that rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that:

- The authorized break may only last for a specific length of time
- Any extension of the break is contrary to the employer's rules
- Any extension of the break will be punished

Can employees have the option of either having meal break or leaving work earlier at the end of a shift?

As discussed above, employees may waive their rights to a meal period under Section 162 only if the requirements of the waiver set forth by New York courts are met. Furthermore, the option of

EXHIBIT A - page 5 of 5

leaving early does not constitute a sufficient employee benefit upon which to satisfy the third of those requirements, as it merely substitutes time off during a workday for time off at the end of a workday. This does not mean that an employer and employee cannot agree that the employee may work through a meal period in exchange for being able to leave work early on an occasional basis due to employee needs. However, the employer and employee cannot agree to such a situation on a long-term, regular basis.

EXHIBIT B - page 1 of 2



County of Onondaga Department of Information Technology

KRONOS PROJECT

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KENNETH R. BEAM, JR.
Chief Information Officer

MAY 14, 2009

TO: Department Heads, Personnel Officers, and Payroll Clerks

FROM: Kronos Executive Oversight Committee

SUBJECT: Kronos Policies

The Kronos Executive Oversight Committee has reviewed the many comments and concerns that were identified by the various Kronos focus groups and has also sought comments and technical feedback from the Kronos Implementation Team. As a result of these reviews the Committee has developed some countywide policies that will be in effect for virtually all employees. In addition, we have developed priorities as to how the Kronos Implementation Team will proceed in addressing the concerns.

Countywide policies are as follows:

1. Kronos Workforce Central will be the method by which all employees' time is recorded and payment is made.

Everyone except elected officials will have their time accounted for by the Workforce Central system. Department heads and their true deputies are exempt from swiping. Everyone else, including all m/c employees and salaried employees will either swipe or use some other approved form of time entry. Requests for exception beyond the dept head and deputy will be reviewed and determined by the appropriate County Administrator.

2. Lunch times will be accounted for.

We continue to require the same accountability for lunch as with prior manual time recording in accordance with work rules that require punching in and out for lunch and personal business. Exemptions to lunch punching are limited to those 24/7 shift operations whose employees are paid for their lunch break and are not permitted to leave their facility. All other employees will swipe out and back in for lunch. Break configuration will be designed to accommodate departmental need.

3. There will be two basic options for configuring schedules and pay.

Those employees who are required to be at work for a specific set schedule will be set up with a pay rule based on that schedule. All others will be set up with an "Interval Rounding" pay rule that pays based on the employee working the appropriate hours each day/week. Supervisors will be expected to view their employees' time cards to assure compliance without the need to approve as many exceptions.

4. Early arrival or late departure (beyond any parameters that have been set in approved flex agreements) will not be compensated for without prior supervisory approval.

Employees who arrive at work and swipe in well before their scheduled start times are not authorized to be at work nor will they be paid until their scheduled shift begins. Likewise, staying late at the ends of workdays/shifts without supervisory approval is not authorized and such time will not be compensated.

EXHIBIT B - page 2 of 2

5. Where ever possible, legal and contractual requirements regarding payment will be configured as automatic pay calculations to provide for uniform enforcement of policies and practices among departments.

6. Manual leave records will be eliminated for any function Kronos accommodates.

The official leave record for all employees is maintained in the Genesys payroll system. Kronos Workforce Central provides each employee's up to date leave balances at the clock eliminating any need for maintaining a duplicate paper record.

Modifications to any of these parameters will be determined by the Executive Oversight Committee.

Priorities

There is much work to be done in order to resolve the concerns that have been identified. The priorities for the Kronos Implementation Team will be as follows:

Work with those departments who are currently in parallel test mode to reconfigure pay rules in line with the policies above and expedite "going live."

Return to those departments who are already "live" to reconfigure as necessary.

Provide new and refresher training to payroll clerks and supervisors to enhance effective use of the Workforce Central System.

Establish protocol and schedule for clock replacement and alternatives

Upgrade Kronos to version 6.1 to allow further Kronos enhancements, such as enhanced scheduler.

Re-establish a time line for implementing Workforce Central in all remaining departments.

Transition from startup/implementation team to ongoing Oversight Committee.

Very truly yours,

Anne D. Rooney, County Administer, Human Services
Jean M. Smiley, County Administrator, Physical Services
Robert E. Antonacci II, County Comptroller
James J. Rowley, Chief Fiscal Officer
Kenneth R. Beam Jr., Chief Information Officer
Elaine L. Walter, Personnel Commissioner

SECTION V

DEPARTMENTAL RESPONSES



CARL HUMMEL
ACTING COMMISSIONER

COUNTY OF ONONDAGA DEPARTMENT OF PERSONNEL

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March 26, 2021

Re: Audit of New York State Labor Law § 162

Dear Mr. Masterpole,

This letter is in response to the findings and recommendations of the draft Audit of New York State Labor Law § 162 (hereinafter “§ 162”) dated February 16, 2021 conducted by your office. The draft audit was initially distributed to the six Onondaga County departments included in the audit (Water Environment Protection, Emergency Communication-E911, Community Development, Board of Elections, Health Department, and Onondaga County Sheriff’s Office) seeking a response from each. However, since lunch periods are a part of time and attendance administration as well as a mandatory subject of bargaining, both of which being the responsibility of the Onondaga County Personnel Department, this office offers a response on behalf of the County and in conjunction with the audited departments.

Below are responses to each of the five recommendations (A-E) from the audit in turn.

Recommendation A: County Administration should review existing policy and then implement and enforce standard procedures for the use of the KRONOS Workforce Management time and attendance software by department.

Response: Onondaga County already has policies and standard procedures for the use of the KRONOS Workforce Management system in place (see manuals here: <http://in.ongov.net/pe/pepayrollforms.shtml>, Exhibit B of the draft audit document, various collective bargaining agreements). However, those procedures provide a certain amount of flexibility necessary to allow for the various unique work schedules throughout county departments. This work schedule variability is critical to departments so that they may effectively and efficiently provide the necessary services to the residents of Onondaga County. Rigid, restrictive time and attendance policies and procedures would necessarily have a negative impact on operations.

That said, based on the findings of this audit, it appears that this flexibility has allowed for certain gaps to develop and exist in time and attendance administration that is not in compliance with county policy. As such, the Division of Payroll Operations will update its regular review processes to further identify these gaps and develop methods for closing them based upon this audit.

Recommendation B: County Administration should consider making automatic punches to record a meal break for certain unique work situations in which

traditional methods for an employee to document their time worked are not available to them.

Response: While it is true that utilizing automatic punches for lunch periods where employees would otherwise be unable to electronically record said lunch period would meet the County requirement to *record* the lunch period (see Exhibit B), it does not provide evidence that the lunch period was actually allowed. As such, it is our opinion that this requires educating departments (administrators, supervisors, payroll clerks) of the requirements of § 162 and County policy, along with the proper application of automatic lunch punches. Such an effort will be undertaken by this office.

Note: Recommendation C on p.4 of the draft audit does not match the same recommendation on p.9. Response is provided to the recommendation on p.9 as it appears to more accurately reflect the findings in that section.

Recommendation C: Each County department should select and adhere to an Administration-approved method for their employees (or category of employees) to use KRONOS so as to ensure adherence to § 162 and ensure CTE, OT and FLSA are being accrued appropriately.

Response: Once the County reviews and implements measures, as needed, to address compliance with § 162 and/or County policy, we will revisit this recommendation as assess if those measures have resolved the issue or if further action is needed regarding the appropriate accrual of CTE, OT and FLSA.

Note: Recommendation D on p.4 of the draft audit does not match the same recommendation on p.10. Response is provided to the recommendation on p.4 as it is more directly related to the scope of the audit.

Recommendation D: County departments should ensure consistency of KRONOS use across the same titles and jobs of similar performance for lunch breaks.

Response: We do not necessarily agree with this recommendation. While on its face it may appear that employees within a department occupying the same job title should have consistent schedules and therefore lunch periods, this is not always the case. Very often, employees in the same job title within a department will have widely varying assignments including location, hours, field work, etc. that affect their lunch period and the administration of such in KRONOS. However, wherever possible, the County will work to ensure consistent administration of lunch periods within departments.

Recommendation E: County departments should put in place measures that will reduce the inefficient use of payroll clerk's (sic) time.

Response: We have two concerns with this recommendation. First, the efficient use of payroll clerks' time does not fall within the scope of this audit. Second, the supporting data and documentation provided upon request by the auditor does not demonstrate that the manual adjustments are solely the result of non-compliance with § 162 and or County policy, although it is probable that the non-compliance is

contributory. As such, the Division of Payroll Operations will review these findings and take appropriate action if deemed necessary.

On behalf of the County and the six audited departments, I would like to thank your office for the opportunity to respond to the recommendations contained within the Audit of New York State Labor Law § 162.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl Hummel', with a large, stylized loop at the end.

Carl Hummel, Acting Commissioner
Onondaga County Personnel Department