

*A REPORT BY THE NEW YORK STATE  
OFFICE OF THE STATE COMPTROLLER*

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**Alan G. Hevesi  
COMPTROLLER**



**DEPARTMENT OF CORRECTIONAL  
SERVICES**

**ADMINISTRATION OF WORKERS'  
COMPENSATION LEAVE**

**2002-S-35**

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**DIVISION OF STATE SERVICES**

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**Alan G. Hevesi**  
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**Report 2002-S-35**

Mr. Glenn S. Goord  
Commissioner  
Department of Correctional Services  
Harriman State Office Building Campus  
Building 2  
Albany, New York 12226

Dear Mr. Goord:

The following is our audit report addressing the Department of Correctional Services' administration of the workers' compensation leave taken by correction officers.

This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

*Office of the State Comptroller*  
*Division of State Services*

September 19, 2003

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# **EXECUTIVE SUMMARY**

## **DEPARTMENT OF CORRECTIONAL SERVICES: ADMINISTRATION OF WORKERS' COMPENSATION LEAVE**

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### **SCOPE OF AUDIT**

The Department of Correctional Services (DOCS), which operates 70 correctional facilities statewide, employs about 22,000 correction officers and 10,000 civilian workers. If these employees are injured on the job and unable to return to work because of the injury, they may file a workers' compensation claim and be placed on workers' compensation leave with pay. Most of the civilian workers are required by their collective bargaining agreements to charge their first seven days of absence to their accrued leave, and if they are unable to return to work after seven days, they are placed on workers' compensation leave at two-thirds of their average weekly salary (up to \$400). The correction officers are allowed by their collective bargaining agreement to be placed on workers' compensation leave at full pay for up to six months without first charging any time to their accrued leave. During the year ended March 31, 2002, DOCS correction officers filed a total of 2,565 workers' compensation claims and were on workers' compensation leave with full pay for a total of 89,736 work days, an average of about 35 lost work days per claim.

Our audit addressed the following questions about selected aspects of the practices and procedures used by DOCS in administering the workers' compensation leave taken by correction officers between April 1, 1997 and March 7, 2003:

- What is the cost of this workers' compensation leave to DOCS?
- Did the amount of leave taken vary significantly at different correctional facilities, and if so, why?
- Are there administrative improvement opportunities for reducing the amount of workers' compensation leave taken by correction officers?

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## **AUDIT OBSERVATIONS AND CONCLUSIONS**

**W**e found that the amount of workers' compensation leave taken by DOCS correction officers has increased significantly, mainly because the average length of the absences has increased significantly. We determined it is costly for DOCS to cover for the absent officers, and recommend actions that could help to reduce the amount of leave taken by the officers.

When a correction officer goes on workers' compensation leave, DOCS must pay the full salary of that officer, the salary of the officer who works the vacated shift, and in many instances, overtime for the officer who works the vacated shift. Overtime is incurred because the substitute officer often must work his or her regularly scheduled shifts in addition to the shift of the injured officer, and as a result, often must work more than 40 hours a week. To cover for the officers who were on workers' compensation leave in the year ended March 31, 2002, we estimate DOCS paid at least \$23.4 million in salary and overtime payments. (See pp. 7-8)

We analyzed the use of workers' compensation leave at all 70 correctional facilities statewide, and performed a more detailed examination at 14 of these facilities. We found that about three-quarters of the claims filed by the correction officers, and about three-quarters of the leave days taken by the officers, related to injuries that were not caused by contact with inmates. We also determined that the officers at some facilities used far more workers' compensation leave than the officers at other comparable facilities. We further determined that the total amount of workers' compensation leave taken by correction officers increased by 37 percent between 1997 and 2002, even though the number of officers remained about the same, and this increase was almost entirely due to an increase in the average length of the absences (which increased from about 24 days to nearly 35 days per claim). Our detailed examination of 14 facilities confirmed that long-term absences are highly significant, as 88 percent of the workers' compensation leave days at these facilities related to long-term absences that were an average of 5.3 months in length. (See pp. 5-10)

A number of actions could be taken to reduce both the length and the number of long-term absences. The most effective action would be to modify, through the collective bargaining process, the terms in the State's employment contract with correction officers that allow the officers to receive up to six months of leave at full pay for any job-related injury without any charge to their leave accruals. Because of this benefit, correction officers have no monetary incentive to return to work quickly and may even realize a higher income on workers' compensation leave through use of disability insurance. In 1992, this particular benefit was negotiated out of the labor contract of another group of State workers, and between 1991 and 1999, the number of workers' compensation claims filed by these workers declined by 42 percent. (See pp. 11-14)

Long-term absences could also be reduced if DOCS made better use of light duty assignments for injured correction officers. The officers are required by their labor contract to perform such duties when they are not physically able to perform their regular duties. We found that one facility was more successful than another at making use of these assignments. We also found that certain improvements could be made in DOCS' efforts to investigate injury claims, detect fraudulent and abusive claims, monitor the recovery of officers on workers' compensation leave, and prevent certain kinds of job-related accidents. (See pp. 16-21)

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## ***RESPONSE OF DOCS OFFICIALS***

**D**OCS officials generally agreed with our recommendations and have already taken steps to implement several of them. DOCS officials noted that each individual facility currently has a Fire and Safety Officer who investigates accidents, and determines whether remedial action is required. We believe that this effort could be enhanced by analyzing accidents in the aggregate, at all facilities, to determine whether there are any patterns showing high injury rates related to common environmental or safety factors.

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# INTRODUCTION

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## Background

The Department of Correctional Services (DOCS), which operates 70 correctional facilities statewide, employs about 22,000 correction officers and 10,000 civilian workers. If any of these employees are injured on the job, they may be entitled to workers' compensation benefits. These benefits have two basic components: (1) payments in lieu of lost wages made by the employer to the injured worker while the worker is unable to return to work because of the injury and (2) payments made by the employer's insurance company to medical service providers for treatment of the worker's injury. This report focuses on the first of these two components (payments in lieu of lost wages) and does not address the second component (medical costs).

All workers' compensation benefits in New York State are governed by the New York State Workers' Compensation Law, which describes how a claim for the benefits is to be filed and adjudicated. The Law also establishes a minimum level for the payments made to injured workers in lieu of lost wages. This minimum statutory level of payment may also be enhanced through collective bargaining agreements.

DOCS employees are represented by a number of different collective bargaining units. Under the collective bargaining agreements that are applicable to most of the civilian employees, a worker who is injured on the job and is unable to return to work because of the injury is required to charge the first seven days of absence to accrued leave credits. If the worker is unable to return to work after seven days, the worker is placed on workers' compensation leave at two-thirds of average weekly salary (up to \$400) until the worker is able to return to work (these terms are consistent with minimum statutory level of payment for workers' compensation benefits). Under the correction officers' collective bargaining agreement, a correction officer who is injured on the job and is unable to return to work because of the injury is immediately placed on workers' compensation leave at full pay for up to six months (182.5 calendar days). If the corrections officer is still unable to return to work after six months, the officer may charge accruals and may be granted the use of sick leave at half-pay. The



combined use of workers' compensation leave, leave accruals and sick leave at half pay cannot exceed one year, cumulatively. Any employee absent from work for more than one cumulative year as a result of a work-related injury may be terminated.

A claim for workers' compensation benefits is initiated by the injured worker, who submits the claim form to his or her employer. If the employer denies the claim, its validity is adjudicated in a hearing held before an administrative law judge of the Workers' Compensation Board, which is the State agency responsible for overseeing the adjudication and payment of all workers' compensation claims. Generally, a claim should be denied if it can be determined that the injury either is not job-related or is not serious enough to prevent the worker from performing his or her duties. Benefits may also be denied and a hearing may be held after a claim has been accepted as valid, if the employer and worker disagree about whether the worker has recovered from the injury and is well enough to return to work.

At DOCS facilities, claims for workers' compensation benefits are submitted to the facility's personnel office, which approves or denies the claims and forwards them to the DOCS Central Office. The Central Office then reviews the actions taken by the facility to determine whether they appear to be appropriate. DOCS also has a Workers' Compensation Investigation Unit, which investigates certain claims to determine whether they are fraudulent or abusive. DOCS is represented at Workers' Compensation Board hearings by the State Insurance Fund (SIF), a State agency that provides workers' compensation insurance coverage to State and local government agencies, not-for-profit agencies and private companies throughout New York State. As the State's insurer, the SIF reviews all claims filed with DOCS; pays the authorized medical expenses resulting from the claims; arranges for medical examinations of claimants, when appropriate, to verify their injuries; and investigates potentially fraudulent claims and abusive practices.

According to records maintained by DOCS, during the year ended March 31, 2002, its 22,000 correction officers filed a total of 2,565 claims for workers' compensation benefits and were on workers' compensation leave with full pay for a total of 89,736 work days, an average of about 35 lost work days per claim.

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## ***Audit Scope, Objectives and Methodology***

We audited selected aspects of the practices and procedures used by DOCS in administering the workers' compensation leave taken by correction officers between April 1, 1997 and March 7, 2003. The objectives of our performance audit were to (1) estimate the cost of this workers' compensation leave to DOCS; (2) determine whether the amount of leave taken varied significantly at different facilities, and if so, why; and (3) identify administrative improvement opportunities for reducing the amount of workers' compensation leave taken by correction officers.

To accomplish these objectives, we reviewed the amount of workers' compensation leave taken at all DOCS correctional facilities over the five-year period ended March 31, 2002. We then selected, for further analysis, a sample of 14 correctional facilities: Arthurkill, Beacon, Bedford Hills, Butler, Downstate, Five Points, Great Meadow, Lakeview, Mid-State, Orleans, Riverview, Sing Sing, Sullivan and Watertown. We visited all fourteen of these facilities, interviewed officials and staff at each facility, and selected for review a random sample of ten workers' compensation case files at each facility. We also interviewed officials at the DOCS Central Office, the DOCS Workers' Compensation Investigation Unit, the SIF and the Department of Civil Service, and reviewed records maintained by DOCS.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of DOCS included within our audit scope. Further, these standards require that we understand DOCS' internal control structures and its compliance with those laws, rules and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence-supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those

operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

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### ***Response of DOCS Officials to Audit***

A draft copy of this report was provided to DOCS officials for their review and comment. Their comments were considered in preparing this report, and are included as appendix B.

DOCS officials generally agreed with our recommendations and have already taken steps to implement several of them. DOCS officials noted that each individual facility currently has a Fire and Safety Officer who investigates accidents, and determines whether remedial action is required. We believe that this effort could be enhanced by analyzing accidents in the aggregate, at all facilities, to determine whether there are any patterns showing high injury rates related to common environmental or safety factors.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Correctional Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

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## WORK DAYS LOST THROUGH WORKERS' COMPENSATION LEAVE

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Correction officers are responsible for supervising inmates while they are inside correctional facilities, and when they are transported outside of the facilities (e.g., in trips to hospitals or transfers to other correctional facilities). In the course of fulfilling this responsibility, officers may be injured while restraining inmates. Moreover, because an officer needs to be physically capable of supervising inmates in order to perform his or her duties, an injury that would not interfere with the duties of a more sedentary worker (such as a sprained ankle) may effectively incapacitate a correction officer. For these two reasons (injuries caused by inmates and the need to be physically capable of supervising inmates), correction officers may need to take more workers' compensation leave than civilian workers.

To determine whether the amount of workers' compensation leave taken by DOCS correction officers appears to be affected, to any significant extent, by factors other than these two reasons (injuries caused by inmates and the need to be physically capable of supervising inmates), we analyzed the workers' compensation leave taken by all DOCS correction officers over the five-year period April 1, 1997 through March 31, 2002. In performing this analysis, we considered the total amount of leave taken in each of the five years, the total number of new claims filed in each year, the average number of work days lost per claim, and the percentage of claims resulting from physical contact with inmates. The number of correction officers employed by DOCS over the five-year period remained relatively constant, at about 22,000 a year. Our analysis was based on information compiled by DOCS.

As is shown in the following table, we found that most of the claims filed by DOCS correction officers were not related to injuries caused by contact with inmates, as such claims averaged fewer than 25 percent of the claims filed during the five-year period. Moreover, while the total number of new claims filed each year did not vary significantly from year to year (fluctuating around the average for the five-year period of 2,617

new claims a year), both the total amount of leave taken each year and the average number of work days lost per claim increased significantly in each year, as follows:

### Correction Officers

<b>Description</b>	<b>1997-98</b>	<b>1998-99</b>	<b>1999-00</b>	<b>2000-01</b>	<b>2001-02</b>
Days of Workers' Comp Leave Taken	65,506	69,529	77,360	84,473	89,736
Average Work Days Lost per Claim	24.3	27.9	29.8	30.8	35.0
Number of New Claims	2,695	2,490	2,593	2,743	2,565
Contact-Related Claims	765	573	560	538	582
Percentage Contact-Related	28.4%	23.0%	21.6%	19.6%	22.7%

In fact, between 1997 and 2002, the amount of workers' compensation leave taken each year by correction officers increased by a total of 37 percent (from 65,506 to 89,736 days), and the average number of work days lost per claim increased by a total of 44 percent (from 24.3 days per claim to 35 days per claim). Since the number of new claims filed each year did not vary significantly, the increase in the total number of workers' compensation leave days taken each year by correction officers was due almost entirely to the increase in the average number of days per claim.

While it is likely that the length of the officers' absences is affected to some extent by their need to be physically capable of supervising inmates before returning to work, we question whether this factor accounts for the 44 percent increase in the average length of the absences (an increase of nearly 11 work days, or two calendar weeks, per claim). That is, if a certain amount of time was needed in 1997 to recover from injuries, it is not clear why 44 percent more time would be needed in 2002.

We conclude that the amount of workers' compensation leave taken by correction officers is affected to a significant extent by factors other than injuries caused by inmates and the officers' need to be physically capable of supervising inmates before returning to work. While these two factors are important and undoubtedly account for a good portion of the workers' compensation leave taken by correction officers, they do not appear to account for the significant increase in the length of the absences.

This increase in the number of workers' compensation leave days taken each year by correction officers is costly to DOCS. Based on the average annual salary of a correction officer (\$43,468), DOCS pays its correction officers an average of about \$208 a day. Therefore, during the 2001-02 fiscal year, DOCS paid a total of \$18.7 million for the 89,736 days correction officers were on workers' compensation leave. DOCS also had to pay other correction officers at least an additional \$18.7 million to work the 89,736 shifts that had been vacated by the officers who were on workers' compensation leave. Moreover, in many of these instances, DOCS had to pay the substitute officers at the standard overtime rate (time-and-a-half, or an additional \$104 a day). This is because officers covering for someone on workers' compensation leave often must work their regularly scheduled shifts in addition to the shift of the absent officer, and as a result, often must work more than 40 hours a week.

It is difficult to specify the exact amount of overtime that results from the need to cover for officers on workers' compensation leave. Officials at some of the facilities we visited stated that, for nearly 100 percent of the shifts that have to be worked by a substitute officer, the substitute officer has to be paid overtime because of the additional shift. Officials at other facilities stated that substitute officers are often paid overtime because of the additional shifts, but overtime is not paid in every instance. If we conservatively estimate that overtime is paid in at least half these instances, during the 2001-02 fiscal year, overtime would have been paid in connection with at least 44,868 of the 89,736 shifts that had to be worked by substitute officers. The incremental cost of this overtime, at \$104 a shift, would have been at least \$4.7 million.

Thus, to cover for the officers who were on workers' compensation leave in the year ended March 31, 2002, we estimate DOCS paid at least \$23.4 million in additional salary and overtime payments, as follows:

- \$18.7 million was paid to the officers who worked the shifts vacated by the officers on workers' compensation leave, and
- at least \$4.7 million in overtime was paid to the officers who worked the vacated shifts.

It should be noted that these costs relate only to the 2001-02 fiscal year. A similar cost was incurred in prior years, and will continue to be incurred in future years, unless the amount of workers' compensation leave taken by correction officers is significantly reduced.

To further analyze the factors affecting the amount of workers' compensation leave taken by DOCS correction officers, we selected a judgmental sample of 14 correctional facilities for detailed examination. At each facility, we reviewed a random sample of ten workers' compensation cases. For the two years reviewed these 14 facilities had 1,423 workers' compensation cases. Our detailed examination covered the two years ended March 31, 2002, and the 14 facilities accounted for about one-third of the total number of workers' compensation leave days taken by correction officers during that two-year period.

In selecting the facilities, we sought facilities of different security levels (maximum, medium and minimum) that were dispersed throughout the State. We also considered the amount of workers' compensation leave that was used by the correction officers at each facility, as indicated by the following measurement: the average number of days of workers' compensation leave per officer per year. In the 2001-02 fiscal year, the 70 facilities averaged about 4 days of leave per officer, as the 22,000 officers statewide used a total of 89,736 days of workers' compensation leave. In our review of the records relating to all 70 facilities, we noticed that this measurement varied significantly from facility to facility, ranging from a low of less than one day of leave per officer per year to a high of more than 13 days of leave per officer per year. To ensure that our sample was representative, we included facilities from the lower, middle and upper portions of this range. We selected a total of six maximum security facilities, six medium security facilities, and two minimum security facilities, as follows:

<b>Facility</b>	<b>County</b>	<b>Security Level</b>	<b>Average Days of Workers' Comp Leave Per Officer Per Year*</b>	<b>Average Lost Work Days Per Claim</b>
Sullivan	Sullivan	Maximum	1.6	31.9
Great Meadow	Washington	Maximum	3.9	27.1
Five Points	Seneca	Maximum	4.9	40.9
Downstate	Dutchess	Maximum	7.0	44.4
Bedford Hills	Westchester	Maximum	10.4	95.0
Sing Sing	Westchester	Maximum	11.2	60.6
Riverview	St. Lawrence	Medium	0.8	35.7
Butler	Wayne	Medium	0.8	23.7
Watertown	Jefferson	Medium	2.2	40.8
Mid-State	Oneida	Medium	5.3	46.5
Orleans	Orleans	Medium	5.9	42.4
Arthurkill	Richmond	Medium	13.2	65.8
Lakeview	Chautauqua	Minimum	4.4	29.9
Beacon	Dutchess	Minimum	5.7	51.7

\* This measurement is expressed in calendar days (seven days per week) rather than work days (five days per week).

Our detailed examination confirmed that long-term absences are a highly significant factor in relation to the amount of workers' compensation leave used by correction officers. In fact, according to our detailed examination, most of the work days lost through workers' compensation leave are lost through long-term absences.

Specifically, during the two years covered by this examination, the 14 facilities had a total of 1,423 workers' compensation claims resulting in a total of 71,190 lost work days. We determined that 88 percent of these lost work days (62,930 days) related to claims with long-term absences (absences of more than 30 work days), while only 12 percent of the lost work



days related to claims with absences of 30 work days or less. A total of 588 of the 1,423 claims resulted in absences of more than 30 work days, and these absences lasted an average of 107 work days (about 5.3 months).

We therefore conclude that the number of work days lost through workers' compensation leave could be significantly reduced if the length and number of long-term absences were significantly reduced. In the following section of this report, we recommend a number of actions that could be taken by DOCS to reduce the length and number of these long-term absences.

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## REDUCING LOST WORK DAYS

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Work days lost through workers' compensation leave cost DOCS more than \$23 million a year. As is described in the previous section of this report, long-term absences are responsible for most of these lost work days. A number of actions can be taken to reduce both the length and the number of these long-term absences. The most effective action would be modify, through the collective bargaining process, the terms in the State's employment contract with the correction officers that allow the officers to receive up to six months of leave at full pay for any job-related injury. Such an action was taken by New York State in 1992 when this particular benefit was negotiated out of the labor contracts of State workers in other negotiating units.

The length and number of long-term absences could also be reduced if DOCS made better use of light duty assignments for injured correction officers and medical examinations to determine whether an officer is able to return to work. We also found that DOCS could do more to deny claims that should be denied, detect fraudulent and abusive claims, and prevent certain kinds of job-related accidents.

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### ***Modifying the Negotiated Benefit***

The correction officers' collective bargaining agreement with New York State allows them to be placed on workers' compensation leave at full pay for up to six months without first charging any time to their accrued leave. In comparison, most of the civilian employees at DOCS are required by their collective bargaining agreements to charge their first seven days of absence (due to job-related injury) to their accrued leave, and if they are unable to return to work after seven days, they are placed on workers' compensation leave at two-thirds of their average weekly salary (up to \$400).

Because of this significant difference in workers' compensation benefits, the civilian workers at DOCS have a much greater incentive to return to work as soon as possible after their injury. As is shown in the following two tables, during the five years

ended March 31, 2002, the civilian workers at DOCS filed far fewer, and much briefer, workers' compensation claims than the correction officers, and as a result, used far fewer leave days per employee than the correction officers:

### Civilian Workers

Description	1997-98	1998-99	1999-00	2000-01	2001-02
Number of New Claims	365	313	271	274	346
Number of New Claims per Worker	.04	.03	.03	.03	.03
Avg. Work Comp Leave Days per Claim *	0.4	0.8	5.1	2.2	4.8
Total Work Comp Leave Days Used	139	257	1,378	591	1,660
Total Work Comp Leave Days per Worker *	.01	.03	.14	.06	.17

\* Does not include the employee's own accrued leave, seven days of which must be charged before any paid worker's compensation leave can be taken.

### Correction Officers

Description	1997-98	1998-99	1999-00	2000-01	2001-02
Number of New Claims	2,695	2,490	2,593	2,743	2,565
Number of New Claims per Officer	.12	.11	.12	.12	.12
Avg. Work Comp Leave Days per Claim	24.3	27.9	29.8	30.8	35.0
Total Work Comp Leave Days Used	65,506	69,529	77,360	84,473	89,736
Total Work Comp Leave Days per Officer	2.98	3.16	3.52	3.84	4.08

For example, in the 2001-02 fiscal year, the civilian workers filed only 3 new claims for every hundred workers, and used an average of only 4.8 days of workers' compensation leave on each claim. In comparison, the correction officers filed 12 new claims for every hundred officers, and used an average of 35 days of workers' compensation leave on each claim. As a result of these differences, the correction officers used 24 times as much workers' compensation leave per employee as the civilian workers (4.08 leave days per officer compared to .17 leave days per civilian worker).

While the difference in jobs accounts for some of this disparity (correction officers are more likely to be injured because of their daily contact with inmates and must be physically capable of supervising inmates before returning from any injury), there are indications that the difference in workers' compensation benefits may be responsible for some of the difference in workers' compensation leave use. In particular, since correction officers are not required to charge accrued leave and receive full pay when they go on workers' compensation leave, they incur no cost when they go on leave and have no monetary incentive to return to work before the six-month limit on full pay expires. In fact, if an officer has disability insurance, which pays the policyholder a certain amount while he or she is unable to work because of injury or illness, the officer will receive more money not working than working. In our discussions with officials at DOCS, the SIF, and the Department of Civil Service, we were repeatedly told that they believe the heavy use of workers' compensation leave by correction officers is driven to a large extent by the generous nature of the negotiated benefit.

These officials noted that, prior to July 1992, the employees in the CSEA bargaining unit were entitled to the same workers' compensation benefits as the corrections officers. However, these benefits were negotiated out of subsequent labor agreements. Prior to this change, the number of workers' compensation claims filed by CSEA workers in 1991 was 34,094; after the negotiated contract change, the number of claims filed by CSEA workers dropped to 27,371 in 1993 and 19,771 in 1999 (a reduction of 42 percent between 1991 and 1999). Officials at the Department of Civil Service attribute this decline to the change in the contractual benefit.

While correction officers will always be more susceptible to injury than civilian workers because of their daily contact with inmates, injuries resulting from contact with inmates have averaged fewer than 25 percent of the workers' compensation claims filed by DOCS correction officers since 1998. Moreover, in our detailed examination of workers' compensation cases at the 14 selected facilities, we determined that absences resulting from inmate-contact injuries last no longer than absences resulting from injuries unrelated to inmate contact. Specifically, 335 of the 1,423 claims (24 percent) filed at the 14 facilities in the two-year period related to injuries resulting from inmate contact, while the 1,088 remaining claims (76 percent) were unrelated to inmate contact. The average number of leave days

used on the 335 claims related to inmate contact was 50.6 days; the average number of leave days used on the 1,088 claims unrelated to inmate contact was 49.6 days.

Thus, it appears that a significant portion of the workers' compensation leave used by correction officers is taken as a result of injuries that are unrelated to their contact with inmates. While the officers need to recover sufficiently from any type of injury, inmate-related or not, before they can resume their normal duties, the absences of some officers may be longer than necessary when there is no incentive for them to return to work as soon as possible. We therefore recommend that such an incentive be incorporated, to the extent possible, in the workers' compensation benefits provided to DOCS correction officers.

Specifically, we recommend that DOCS seek to have the Governor's Office of Employee Relations use the collective bargaining process to modify these benefits so that correction officers have to charge their own accrued leave in certain circumstances and are not able to receive a full six months of leave at full pay for every job-related injury, regardless of the circumstances. We note that all job-related injuries are not treated the same in the workers' compensation benefits provided to correction officers by the state of Michigan, as the officers receive full pay without charge to their accrued leave only when they are injured by assaults. For other injuries, the officers must use a portion of their own accrued leave before going on workers' compensation leave.

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### ***Using Medical Examinations To Reduce the Length of Absences***

**D**OCS may request that employees on workers' compensation leave be examined by a doctor under contract with the SIF. Such requests are made to the SIF, which schedules the examination. These medical examinations have three possible outcomes:

- the nature and extent of the disability claimed by the officer's doctor is confirmed,
- the officer is returned to work through a light duty assignment, or
- the officer returns to full duty.

Thus, in some instances, a medical examination can reduce the length of an absence.

According to Policy Bulletin 93-02 issued by the Department of Civil Service, medical examinations should be scheduled when:

- the initial prognosis indicates the employee will be absent more than six weeks (in this case, the employee should be examined about five weeks into the absence),
- an employee expected back at work less than six weeks after an injury does not return to work on the expected date (in this case, the employee should be examined as soon as possible after failing to return), or
- management has reason to believe the injured employee may be able to perform a limited light duty assignment.

We examined the use of medical examinations by the 14 facilities in our sample. We found that the examinations were used by all 14 facilities. However, the effectiveness of the examinations in reducing the length of absences was significantly limited for two reasons: (1) many examinations were delayed, as they were not scheduled within the timeframes recommended by Policy Bulletin 93-02, Section 21.8, and (2) many examinations were not conclusive, as the SIF doctor did not always make a definitive statement indicating whether the officer could return to work.

Medical examinations were delayed for a number of reasons. In some instances, examinations were delayed because some facilities do not follow the guidelines provided in Policy Bulletin 93-02, Section 21.8 when they request an examination from the SIF, as follows:

- Two facilities with large caseloads request an examination as soon as the SIF confirms receipt of the case-initiating documents.

- Two facilities request examinations if the case goes longer than three to five days.
- One facility uses three weeks as a threshold for requesting examinations.
- Six facilities request an examination only for long-term cases, while others say the timing of the request is based on experience.
- Nine facilities do not systematically track the progress of cases, and thus are not able to request medical examinations on a regular basis.

Because of these varied approaches, some facilities are slow to request examinations and others request examinations too soon. Automatically requesting an examination at the start of a case, as some facilities do, may unnecessarily clog the system and make it difficult for the SIF to schedule examinations promptly. Moreover, a premature examination may only confirm the initial medical report from the claimant's doctor, as the officer may not have had enough time to recover. For these reasons, facilities need to follow the guidelines provided by the Department of Civil Service.

Examinations were also delayed after they were requested by a facility. While the SIF has agreed to schedule examinations within five work days of receiving the request, we found that this timeframe generally is not met. For example, at one facility, the officials routinely expect that examinations will be scheduled four to six weeks after their request, and at another facility, the officials expect examinations will be scheduled two months after they are requested. It is difficult for an examination to reduce the length of an absence if the examination itself is delayed for so long a period.

We identified a number of reasons for delays in scheduling requested examinations. According to SIF officials, the medical specialists required for some types of examinations are not readily available in some remote locations. Consequently, the doctors may wait until there are a sufficient number of patients before traveling to the locality. Delays also seemed to be more of a problem in the downstate area, as facilities in that area were dissatisfied with the regional offices of the SIF, stating that it took an inordinate amount of time to contact SIF

representatives to arrange the examinations. Certain upstate facilities believed the SIF's Albany office was effective at scheduling examinations, and noted that this office permanently assigns the same claims examiner to a correctional facility. We also determined that examinations can be delayed when officers return to work and then go back on workers' compensation leave on the same claim. In one such case, the examination requested by the facility was delayed for nearly a year.

When the medical examination is finally held, the SIF doctor is expected to complete a Capabilities Form, which is intended to provide the employer with enough information to determine whether the employee is capable of performing his or her regular duties, a limited light duty assignment, or no duties at all. If the employee is not yet capable of performing any duties, the completed form is supposed to indicate when the employee can be expected to return to work. However, facility officials told us that, in many cases, the doctors do not adequately identify the extent of the disability and do not specify an expected return date. In such instances, facility officials are supposed to contact the SIF to obtain clarification, but the officials indicated that this further delays the process.

If an injured correction officer has made progress in recovering from an injury, but is not yet well enough to perform all regular duties (in particular, restraining inmates), the officer may be able to perform light duties not involving contact with inmates. Correction officers are required by their labor contract to perform such duties when they are not physically able to perform their regular duties. It is possible that the amount of workers' compensation leave used by correction officers could be significantly reduced if greater use were made of such assignments.

We found that the officials at one facility are willing to use light duty assignments whenever possible, while officials at another facility do not think such assignments are productive. We recognize that it is not always easy to find productive work for an officer who cannot be around inmates. We also recognize that assigning clerical tasks to such officers can cause labor-management problems. However, at least one facility is able to make use of such assignments. We recommend that the practices of this facility be studied and applied to other facilities to the extent possible. We note that officers are less likely to be identified as eligible for light duty assignments when medical



examinations are delayed; a timely examination is needed to identify an officer who is well enough to perform light duty assignments, but not well enough to perform regular duties.

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### ***Denying Claims, Investigating Fraud and Preventing Injuries***

Generally, a workers' compensation claim should be denied by the employer if it can be determined that the injury either is not job-related or is not serious enough to prevent the worker from performing his or her duties. If such a determination is to be made, and if this determination is to be reliable enough to withstand challenge by the claimant in a hearing before the Workers' Compensation Board, certain actions must be taken by the facility officials who investigate the accident reported by injured correction officer. It is especially critical that this investigation be thorough and appropriately documented. According to SIF officials, because of the way the Workers' Compensation Law is written, the burden of proof is on the employer in any hearing before the Workers' Compensation Board: the employer must prove that a claim is not valid. Consequently, any denial of a claim must be supported by evidence that explicitly shows why the injury is not job-related or is not serious enough to prevent the worker from performing his or her duties. It is not enough simply to show that the employee has filed a number of claims in the past, and thereby imply that the present claim is suspicious.

However, SIF officials stated that facility administrators are not always aware of the type of evidence that is needed, how this evidence must be conveyed to the SIF, or even what types of cases are deniable. As a result of such weaknesses in the investigation process, claims that should be denied are less likely to be identified, and claims that are denied are less likely to be successfully denied before the Workers' Compensation Board. We recommend that facility officials receive training from the SIF about the actions that should be taken in the investigation of a workers' compensation claim.

We also note that the experience of the Principal Clerks at the 14 facilities we visited varied considerably, ranging from 3 weeks to 17 years in the job. Since these employees are responsible for reviewing and monitoring all workers' compensation claims at their facilities, it is critical that they be fully informed about the actions that should be taken in regard to a workers' compensation case. However, we found that neither

the Principal Clerks nor any other DOCS employees receive formal training in workers' compensation procedures. The Principal Clerks stated that they received informal "hands-on" training from their predecessors or the DOCS Central Office, and Central Office officials stated that they are in constant communication with the facilities about matters relating to workers' compensation. While this communication and the informal training help the Principal Clerks address many of the issues that must be addressed in workers' compensation cases, the inappropriate use of workers' compensation leave is more likely to be detected and prevented if these informal processes were enhanced by a formal training program.

We note that some of the least experienced Principal Clerks were employed at facilities with the highest use of workers' compensation leave (such as Bedford Hills and Arthurkill, where the Principal Clerks had less than two years experience), while some of the most experienced Principal Clerks were employed by facilities with the lowest use of workers' compensation leave (such as Great Meadows, where the Principal Clerk had 10 years experience). Almost all of the facility officials we interviewed recommended enhanced training as an improvement opportunity. Topics for training included:

- Basic case processing
- Red flag awareness (potential risk factors)
- Interaction with the SIF and the Workers' Compensation Board
- Requirements for denying a case
- Interpreting Board decisions
- The role of the SIF
- Sufficient medical documentation
- Preparation and interpretation of accident reports

All these topics are now addressed on an informal basis; if they were addressed through handbooks, seminars or formal training sessions, DOCS could enhance its ability to deny claims and reduce long-term absences.

It is estimated by experts in the insurance industry that between 10 and 20 percent of all workers' compensation cases may be fraudulent. To address this vulnerability, DOCS was required by State law in 1998 to establish its Workers' Compensation Investigation Unit (WCIU) to detect fraudulent and abusive practices. The WCIU has two full-time and two part-time

investigators who initiate investigations on the basis of facility requests and their own analysis of DOCS records relating to workers' compensation cases. These investigations consist primarily of surveillance to determine whether the claimant is, in fact, disabled as a result of the injury. The investigations may result in disciplinary procedures against a claimant or criminal prosecution for fraud. During the year ended March 31, 2002, the WCIU initiated a total of 358 investigations, 15 of which resulted in disciplinary action and three of which resulted in arrests.

Officials at most of the 14 facilities we visited stated they were aware of the WCIU, and five facilities had experienced at least one investigation. Many of the officials stated that the WCIU does not seem to have adequate resources and should expand its presence. We note that the results of the investigations are not broadly distributed, and as a result, the deterrence provided by the WCIU may not be as effective as it could be. We recommend that the presence and activities of the WCIU be better publicized within DOCS.

The SIF also initiates investigations of cases it considers questionable. SIF officials told us they are not always made aware of local suspicions about a case, and do not normally see the accident report unless they make a field investigation. We also note that the SIF does not normally communicate the results of its investigations to the facility. We believe the investigative efforts of both DOCS and the SIF would benefit from better communication between the two agencies.

In our visits to the 14 selected facilities, we asked officials what factors, other than inmate contact, tended to contribute to job-related injuries. Some officials noted that certain aspects of a facility related to its age or design, such as extensive staircases or manual gate and lock mechanisms, can contribute to falls and muscle strains. Thus, injuries might be reduced if certain hazardous features were modified or replaced, or if other precautions were taken. For example, officers now have special protective gear to wear when forcibly removing recalcitrant inmates from their cells. DOCS procedures require that all accident reports be reviewed, and monthly meetings be held to determine whether safety can be improved. We recommend that these efforts be expanded to include a systematic analysis of the types of injuries by facility to identify opportunities to

address environmental or safety factors affecting workers' compensation claims.

### **Recommendations**

1. Consider working with the Governor's Office of Employee Relations, which is responsible for negotiating labor contracts with correction officers, to modify the workers' compensation benefits provided to the officers. Through negotiation, determine if a reasonable distinction can be drawn between injuries sustained due to the risks inherent in corrections facility work versus those common for all public employees. Seek to modify the benefits so that correction officers have to charge their own accrued leave in certain circumstances and are not able to receive a full six months of leave at full pay for every job-related injury, regardless of the circumstances.
2. Monitor correctional facility practices in requesting medical examinations from the SIF, and take corrective action when facilities do not follow the guidelines contained in the Department of Civil Service's Policy Bulletin 93-02, Section 21.8.
3. Work with the SIF to expedite the scheduling of medical examinations and to improve the usefulness of the diagnoses made by the SIF doctors performing the examinations.
4. Identify the practices used by the facilities that have been successful in assigning correction officers to light duty assignments, and adopt these practices at other facilities to the extent possible.
5. Work with the SIF to train facility officials in the actions that should be taken in the investigation of workers' compensation claims and the monitoring of employees on workers' compensation leave.
6. Determine whether additional resources should be provided to the WCIU.
7. Publicize the presence and activities of the WCIU to correction officers.

### **Recommendations (Cont'd)**

8. Systematically review the types of injuries by facility to identify opportunities to address environmental or safety factors affecting workers' compensation claims.

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## MAJOR CONTRIBUTORS TO THIS REPORT

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GLENN S. GOORD  
COMMISSIONER

August 8, 2003

Mr. William P. Challice  
Audit Director  
Office of the State Comptroller  
Division of Management Audit &  
State Financial Services  
123 William Street, 21st Floor  
New York, New York 10038

Re: **Draft Audit of the Department of  
Correctional Services' Administration of  
Workers' Compensation Leave, Report  
2002-S-35**

Dear Mr. Challice:

In accordance with Section 170 of the Executive Law and in response to your correspondence of July 3, 2003, attached is the Department's reply to the Draft Audit of the Department of Correctional Services' Administration of Workers' Compensation Leave, Report 2002-S-35.

We have complied with the provisions of the Budget Policy and Reporting Manual, item B-410 by forwarding two copies of this response to the Division of the Budget on August 7, 2003.

God Bless America,

  
Glenn S. Goord  
Commissioner

Attachment

**Appendix B**



GLENN S. GOORD  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES

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1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

CHARLES M. DEVANE  
DEPUTY COMMISSIONER  
ADMINISTRATIVE SERVICES

**MEMORANDUM**

**TO:** Charles M. Devane, Deputy Commissioner

**FROM:** <sup>T.B.</sup>  
Terry Baxter, Director of Personnel

**SUBJECT:** O.S.C. Draft Audit of the Department of Correctional Services'  
Administration of Workers' Compensation Leave, Report 2002-S-35

**DATE:** August 7, 2003

Listed below are our responses to the Office of the State Comptroller's recommendations contained in the draft audit of this Department's Administration of the Workers' Compensation Leave Program.

- 1.) Recommendation -- Consider working with the Governor's Office of Employee Relations, which is responsible for negotiating labor contracts with Correction Officers, to modify the workers' compensation benefits provided to the Officers. Through negotiation, determine if a reasonable distinction can be drawn between injuries sustained due to the risks inherent in corrections facility work versus those common for all public employees. Seek to modify the benefits so that Correction Officers have to charge their own accrued leave in certain circumstances and are not able to receive a full six months of leave at full pay for every job-related injury, regardless of the circumstances.

Response -- The recommendation has been referred to the chief negotiator of the Governor's Office of Employee Relations for consideration in the current contractual negotiations with NYSCOPBA.

- 2.) Recommendation -- Monitor correctional facility practices in requesting medical examinations from the SIF, and take corrective action when facilities do not follow the guidelines contained in the Department of Civil Service's Policy Bulletin 93-02, Section 21.8.



Response -- Facility Personnel Offices will be required to maintain continuing chronological logs of the Security Medical Exam process. The logs will be reviewed by the Senior Personnel Administrators, bi-weekly.

- (3.) Recommendation -- Work with the SIF to expedite the scheduling of medical examinations and to improve the usefulness of the diagnoses made by the SIF doctors performing the examinations.

Response -- DOCS is currently working with the Governor's Office of Employee Relations, The Division of the Budget and the State Insurance Fund to create a program under which the Security Medical Exams can be further expedited.

- (4.) Recommendation -- Identify the practices used by the facilities that have been successful in assigning Correction Officers to light duty assignments, and adopt these practices at other facilities to the extent possible.

Response -- Facilities are required to assign qualified Correction Officers to Light Duty Posts in accordance with the negotiated agreement. However, it may be useful to determine the type of light duty posts that are the most productive and pass that information on to all facilities.

- (5.) Recommendation -- Work with SIF to train facility officials in the actions that should be taken in the investigation of workers' compensation claims and the monitoring of employees on workers' compensation leave.

Response -- Central Office Personnel staff will be conducting facility training in the area of Workers' Compensation Claims review. SIF officials will be invited to participate in the training program.

- (6.) Recommendation -- Determine whether additional resources should be provided to the WCIU.

Response -- The Department will conduct a review of current resources devoted to the WCIU and make a determination regarding the need for additional resources at that time.

- (7.) Recommendation -- Publicize the presence and activities of the WCIU to Correction Officers.

Response -- The Department will take this recommendation under advisement.

- (8.) Recommendation -- Systematically review the types of injuries by facility to identify opportunities to address environmental or safety factors affecting workers' compensation claims.

Response -- Each facility currently has a Fire and Safety Officer who maintains the responsibility of investigating accidents that occur in the workplace and determining whether or not remedial action is required.

TB:dmm