

**Directive 393.01 Inmate Workers Compensation**

**STATE OF VERMONT  
AGENCY OF HUMAN SERVICES  
DEPARTMENT OF CORRECTIONS**

**Directive: 393.01**

**Subject:** Inmate Workers Compensation  
**Effective Date:** June 15, 1994 **Review and Re-Issue Date:**  
**Supersedes:** NEW **APA Rule Number:**

<b>Recommended for approval by:</b>		<b>Authorized By:</b>	
_____	_____	_____	_____
<b>Signature</b>	<b>Date</b>	<b>Signature</b>	<b>Date</b>

**1. Authority:**

1.1. Department Policy 393 - Inmate Workers Compensation.

**2. Purpose:**

2.1. To define and set forth the manner and amount of compensation and the rules and regulations governing such compensation, consistent with the obligations set forth in Policy 393.

**3. Applicability/Accessibility**

3.1. Inmates or their dependents for injuries suffered by an inmate in work, industry, or an employment program at a correctional facility, or any community service or public works activity or vocational training directly supervised by the Department of Corrections.

**4. Directive:**

4.1. Prompt reporting of an injury is essential for purposes of this policy. Whenever an inmate worker is injured while in the performance of an assigned duty (for the purposes of this document, "assigned duties" is defined as follows: duties involving work, industry, or an employment program at a correctional facility, or a Prison Industry Enhancement program, or any community service or public works activity or vocational training, directly supervised by the department of corrections), shall immediately report the injury to the inmate's official work detail supervisor. The supervisor, if he/ she feels that an inmate's injury warrants medical attention, shall send the inmate to the Facility's Health Care Specialist or a Health Care Provider in the community. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment may cause forfeiture of any claim for lost time wages and/or accident compensation for impairment resulting from the injury.

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### **4.2. Lost Time Wages**

- 4.2.1 If an inmate is injured and believes that his/her injury will result in time lost from compensated work, the inmate must file with the Superintendent an initial claim within 72 hours of the injury.
- 4.2.2 After a medical examination, an initial recommendation by the facility medical personnel will be made to the Superintendent (Attachment A, Entitlement to Lost Time Wages) concerning the impact of any resultant medical problem or impairment on the offender's ability to work.
- 4.2.3 An initial ruling as to whether an inmate can collect lost time wages shall be made by the Superintendent within thirty (30) days from the date the claim was filed. Injuries not immediately reported to the supervisor but later claimed could result in forfeiture of said claims. Lost time wage recovery shall apply only to those inmates receiving cash compensation at the time of injury.
- 4.2.4 Record of injury and claim is essential for the purpose of this directive. After initiating necessary action for medical attention, the work detail supervisor shall immediately prepare an incident report of the accident stating the name of the injured inmate and the injury sustained. The incident report shall be immediately forwarded to the Superintendent.
- 4.2.5 The facility Superintendent shall also submit, prepare, record or otherwise comply with Departmental and facility "incident" reporting requirements as may be in effect at the time of the accident.
- 4.2.6 On the basis of recommendations from the treating health care personnel, the Superintendent shall determine whether an inmate is entitled to lost time wages with co-authorization for Vermont Correctional Industries' employment from the Director of Vermont Correctional Industries (Attachment A, Entitlement to Lost Time Wages).
- 4.2.7 The Superintendent shall forward all incident reports, reports of injury and medical diagnosis and treatment summaries to the Department claims examiner.

### **4.3. Compensation Awards**

- 4.3.1 A Claims Examiner shall be appointed by the Commissioner to consider all requests for compensation awards. After investigation and consideration of any compensation claim, the Examiner shall either approve or disapprove the claim and attach to the original paper representing such claim a concise statement of facts developed by the proceedings upon which his/her approval or disapproval is based.
- 4.3.2 The Claims Examiner shall be appointed by the Commissioner of the Vermont Department of Corrections. He/she may review all claims for benefits and shall approve compensation awards.

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He/she shall be empowered pursuant to 28 V.S.A., Section 103 to review and investigate any claims for lost time wages and compensation awards. When requested by an inmate, the Examiner shall conduct a hearing to review a compensation award pursuant to guidelines established in this directive.

### **4.4. ELIGIBILITY DETERMINATIONS**

- 4.4.1 Compensation is paid to inmates or their dependents for injuries suffered in the performance of an assigned duty, as previously defined. Compensation is not paid, however, for injuries resulting from participation in programs of a social, recreational, or community relations nature, or from the maintenance of the inmate's own living quarters, or for voluntary work or activities not directed by the correctional department. Furthermore, compensation will not be paid for injuries suffered away from the work location, e.g., while the claimant is going to or leaving work, or going to or coming from lunch outside of the work station or area. Inmate compensation pursuant to this policy shall not apply to injuries arising out of work release activities.
- 4.4.2 Compensation shall not be allowed for an injury caused by an inmate's willful intention to injure him/herself or by an inmate's willful failure to follow established safety procedures.

### **4.5. Lost Time Wages**

- 4.5.1 In order to apply for lost time wages, an inmate must immediately have reported his injury to his work supervisor and have filed an initial claim with the facility Superintendent within seven days of the date of the injury, unless the report is delayed for good cause. (Attachment B, Claim for Lost Wages)
- 4.5.2 Upon receiving a claim for lost time wages, the Superintendent shall conduct an investigation to determine whether benefits shall be paid to the claimant. The determination shall be made upon the recommendations of the facility medical personnel after a medical examination and shall be made within thirty (30) days of the date the claim was filed.
- 4.5.3 An inmate worker receives lost time wages for the number of regular work hours that the inmate is absent from work due to injury sustained in the performance of the inmate's work assignment. Payment of lost time wages shall commence on the fourth day following the injury. However, if the injury results in an inability to work for a period exceeding ten calendar days, payment of lost time wages shall commence as of the day of injury.
- 4.5.4 The basis for determination of lost time wages shall be based on the standard hourly rate paid to the inmate by the Vermont Department of Corrections at the time of injury. If the inmate is

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directed to an institutional work assignment for which he/she is not receiving compensation, lost time wage recovery rules shall not be applicable.

4.5.5 The rate of pay for lost time wages shall be 66 2/3 % of the hourly rate paid to the inmate at the time of injury.

4.5.6 The inmate shall receive lost time wages until the inmate:

4.5.6.1 is medically certified as fit for return to a regular work assignment or to a lighter duty work assignment (Attachment C, Medical Certification of Work Fitness); or

4.5.6.2 returns to the pre-injury work assignment; or

4.5.6.3 is re-assigned to another work area or program for reasons unrelated to the sustained work injury;

4.5.6.3.1 An inmate who refuses to return to a regular work assignment or to a lighter duty work assignment, after medical certification of fitness for such duty, relinquishes all rights to further payment of lost time wages from the date of such refusal;

4.5.6.3.2 An inmate medically certified as fit or work shall sustain no monetary loss due to a required change in work assignment. When there is no light duty or regular work assignment available at the same rate of pay as the inmate's pre-injury work assignment, that inmate shall be paid the difference in lost wages. Lost time wages are paid until a light duty or regular work assignment is available at the same pay rate as, the inmate's pre-injury work assignment or until the inmate is medically certified for and returns to the pre-injury work assignment; or

4.5.6.4 is released from incarceration in a correctional facility.

4.5.7 An inmate who disagrees with the decision on either the work-relatedness of an injury or the rate at which lost time wages are paid, may appeal that decision to the Commissioner. The Commissioner, at his/her discretion, may conduct evidentiary hearings, interview parties and witnesses and review all records or documentation. Notice of the Commissioner's decision shall be sent to all concerned parties.

### 4.6. Compensation Awards

4.6.1 In order to obtain compensation after release (for the purposes of this document, "release" is defined as release from community custody or release from incarceration in a correctional

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facility, or release from a supervised community sentence) a claimant must have complied with the applicable requirements as defined above.

- 4.6.2 A claimant seeking compensation after release must file a second claim with the Department of Corrections within 60 days after release, specifying the disability adversely affecting claimant.
- 4.6.3 The claim shall be investigated by the Claims Examiner appointed by the Commissioner and empowered under 28 V.S.A. Section 103 to investigate said claims.
- 4.6.4 The Department of Corrections will determine the appropriate medical plan for the inmate seeking compensation, whether the inmate has been released or has been otherwise re-incarcerated.
- 4.6.5 Authorized payment to inmates upon release shall be comparable to what a similarly injured employee would receive under chapter 9 of Title 21 V.S.A. and pursuant to theories of recovery established under 21 V.S.A., Subsection 644-649. In calculating release compensation, the Claims Examiner shall use the schedules provided in 21 V.S.A., Subsection 644-649.
  - 4.6.5.1 The wage rate utilized to determine the average weekly compensation shall be the hourly wage actually paid to the inmate at the time of injury or the hourly minimum wage recognized by the State of Vermont at the time of injury, whichever is higher. In no event shall an inmate be entitled to more than 330 weeks payment for any combination of permanent and/or temporary disability.
- 4.6.6 In determining a compensation award for an inmate upon release, the Claims Examiner shall review and investigate the claim within 30 days of the date the claim was received. He/she shall review any reports, claims or other documentation concerning the injury in question. The Claims Examiner may also require that the inmate be further examined by facility medical personnel or any specified physician. Failure of the inmate to provide requested medical reports or other documentation or to be examined by the specified physician shall result in termination of any compensation claim until such time as the inmate shall comply with the Department's request.
- 4.6.7 If an inmate disagrees with the Claims Examiner's decision, he may appeal in accordance with the provisions outlined below.

### 4.7. Request For Hearing

- 4.7.1 Any claimant not satisfied with the decision of the Claims Examiner, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, may be afforded an opportunity for a hearing before the Commissioner or designee. A

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claimant may request a hearing by writing to the Commissioner, Department of Corrections, 103 South Main Street, Waterbury, Vermont 05671-1001.

- 4.7.2 Upon receipt of claimant's request for a hearing, information upon which the initial determination was based shall be mailed to the claimant at the claimant's last known address.
- 4.7.3 The hearing shall be held within 60 days of the Commissioner's receipt of claimant's request, except as provided in Paragraph D of this section. Notice of the date set for the hearing shall be mailed to the claimant at the claimant's last known address at least 15 days prior to the date of the hearing. When practical, the hearing shall be set at a time convenient for the claimant, and all hearings shall be conducted at the Central Office of the Department of Corrections, 103 South Main Street, Waterbury, Vermont 05671-1001, unless otherwise indicated.
- 4.7.4 A hearing or reconsideration may be postponed at the option of the Commissioner, or, if good cause is shown, upon request of the claimant. A claimant shall be considered to have abandoned the request for a hearing if the claimant fails to appear at the time and place set for hearing.
- 4.7.5 If a claimant plans to present witnesses at the hearing, the claimant must provide the Commissioner with a list of the witnesses' names and addresses and an outline of their proposed testimony at least ten days prior to the scheduled hearing date.
- 4.7.6 Any person confined at the time of the hearing in a federal, state, or local penal or correctional institution may not appear as a witness, but that person's testimony may be submitted in the form of a written or tape recorded statement.
- 4.7.7 In conducting the hearing, the Commissioner is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the rights of the claimant and the obligations of the State. At such hearing, the claimant shall be afforded an opportunity to present evidence in support of the claim under review.
- 4.7.8 The Commissioner shall receive such relevant evidence as may be submitted by the claimant and shall, in addition, receive such other evidence as the Commissioner may determine to be necessary and useful in evaluating the claim. Evidence may be presented orally and/or in the form of written statements and exhibits.
- 4.7.9 The hearing shall be recorded and retained for a period of at least 90 days from the date of the Commissioner's final decision.
- 4.7.10 The Commissioner shall mail a written notice of its determination to affirm or amend the Claims Examiner's initial decision, with the reasons therefore, to the claimant at the claimant's last

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known address not later than 30 days after the date of the hearing, unless the Commissioner needs to make a further investigation as a result of information received at the hearing.

4.7.11 Vermont Department of Corrections may not assume any expenses incurred by the claimant, the claimant's representative, or any witness (es) appearing on behalf of the claimant in connection with attendance at the hearing.

4.7.12 A claimant may appoint any person to represent the claimant's interest in any proceeding for determination of a claim under this part so long as that person is not confined in any federal, state or local penal or correctional institution except with the Commissioner's permission. Claimant's appointment of a representative must be in writing, with a copy filed with the Commissioner or on the record at the hearing.

4.7.13 Nothing shall prevent the inmate, with the concurrence of the Commissioner, from waiving any or all portions of this hearing procedure.

### **4.8. Payment**

4.9.1 Payment of lost time wages shall be made to an inmate on a regular basis in the timely manner that he would receive institutional wages. Compensation awards shall commence upon release and may be paid in periodic installments or a lump sum, at the Commissioner's discretion.

4.9.2 Any benefits that are being received under this program shall cease immediately upon re-incarceration and shall not be paid during the duration of such re-incarceration.

### **4.9. Death Benefits**

4.9.1 In the event that death results from the injury, the compensation to dependents shall be as defined in V.S.A. 21, chapter 9, subsection 632.

4.9.2 Death compensation awards will be made in one lump sum payment or installments as specified by the Commissioner.

## **5. Training Method**

5.1.

## **6. Quality Assurance Processes**

6.1.

## **7. Financial Impact:**

## **8. References**

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**9. Responsible Director and Draft Participants**