

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 464.00: EMPLOYMENT PROGRAMS OUTSIDE A CORRECTIONAL INSTITUTION:
WORK RELEASE

Section

- 464.01: Purpose
- 464.02: Statutory Authorization
- 464.03: Cancellation
- 464.04: Applicability
- 464.05: Access to Regulations
- 464.06: Definitions
- 464.07: Authorized Activities
- 464.08: Eligibility
- 464.09: Approval Process for Program Participation
- 464.10: General Rules
- 464.11: Approval Process for Release on Permit
- 464.12: Release Authorization
- 464.13: Employment
- 464.14: Financial Deductions
- 464.15: Absence from Employment Site
- 464.16: Termination of Employment
- 464.17: Escape Procedures
- 464.18: Program Monitoring
- 464.19: Record-Keeping
- 464.20: Evaluation
- 464.21: Community Support and Job Development
- 464.22: Responsible Staff
- 464.23: Annual Review Date
- 464.24: Severability Clause

464.01: Purpose

The purpose of 103 CMR 464.00 is to establish guidelines governing work release programs for inmates. The establishment of employment programs for inmates outside correctional institutions is intended to provide inmates with access to a wide range of employment opportunities which help facilitate their successful reintegration into the community. 103 CMR 464.00 sets forth the requirements for participation in the work release program and the procedures for the administration of the work release program.

464.02: Statutory Authorization

103 CMR 464.00 is issued pursuant to M.G.L. c. 124, § 1(c), (e) and (q) and M.G.L. c. 127, §§ 48, 49, 49A and 86F.

464.03: Cancellation

103 CMR 464.00 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding Work Release Programs which are inconsistent with 103 CMR 464.00.

464.04: Applicability

103 CMR 464.00 is applicable to all employees and inmates at all correctional institutions within the Department of Correction, including contract programs. 103 CMR 464.00 is not applicable to correctional programs operated pursuant to 103 CMR 455.00.

464.05: Access to Regulations

103 CMR 464.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department employees. A copy of 103 CMR 464.00 shall also be maintained in each Superintendent's Central Policy File and at each inmate library.

103 CMR: DEPARTMENT OF CORRECTION

464.06: Definitions

Associate Commissioner - The Associate Commissioner for Programs and Treatment.

Classification Committee - The committee of staff persons, approved by the Superintendent of a facility/institution, who review inmates for the purpose of making recommendations concerning inmate eligibility and suitability for programs.

Commissioner - The Commissioner of the Department of Correction.

Contract Facility - A facility, other than a state correctional institution under contract to the Department of Correction pursuant to M.G.L. c. 127, § 49.

Department - Department of Correction.

Earned Income - Income derived from a source of employment, including wages, salary and commissions, consistent with the I.R.S. codes.

Employer - Any employer, either public or private, other than the Department of Correction.

Facility/Institution - A state correctional institution, a county correctional facility, or a contract facility.

Inmate - Any person serving a sentence under law or otherwise in the legal custody of the Department of Correction.

Minimum Wage - That sum of money which is established as a minimum wage by the federal government.

Self-employed - An inmate earning income directly from his own business, trade or profession rather than a specified salary or wages from an employer.

Superintendent - The chief administrative officer of a facility/institution.

Work Release - The release of an inmate into the community for the purpose of participating in a work release program.

Work Release Coordinator - The staff person, appointed by the Superintendent of a facility/institution, responsible for the operation of the work release program.

Work Release Program - Any program, established pursuant to M.G.L. c. 127, § 49, which is designed to provide inmates with an opportunity to earn compensation, to render services on a volunteer basis, or to attend interviews or counseling sessions designed to secure or continue employment opportunities.

464.07: Authorized Activities

Work Release activities include employment, job interviews, meals in conjunction with employment or job interviews, transportation to and from the place of employment or job interview, and any other outside employment activities including volunteer work, approved by the Superintendent.

464.08: Eligibility

To be eligible for participation in Work Release Programs, an inmate must be within 18 months of parole eligibility, have completed any mandatory portion of his sentence, and be otherwise eligible under M.G.L. c. 127, § 49 and other applicable laws.

464.09: Approval Process for Program Participation

Any pre-release eligible inmate may be approved by the Commissioner for participation in Work Release Programs.

- (1) The approval process at the institutional level for program participation shall be as follows:
 - (a) The Classification Committee shall make a recommendation to the Superintendent regarding an inmate's participation in the program.
 - (b) In considering the recommendation, the Classification Committee will review the inmate's case record, ensure eligibility, interview the inmate, determine the inmate's suitability for program participation and develop an individual written program plan based on:
 1. program adjustment;
 2. disciplinary record;
 3. established goals;
 4. involvement in work, education or training programs;
 5. needs assessment;
 6. potential benefits to the inmate;
 7. safety of the community;
 8. prior criminal history, parole/probation history and escape history.
 - (c) A designated staff member shall prepare a report including the facts of the inmate's record, the recommendation of the Classification Committee, the reasons for the recommendation, and other relevant factual data.
 - (d) Upon receiving the recommendation of the Classification Committee, the Superintendent shall make a recommendation to the Commissioner consistent with the Department's classification process.
- (2) The process for denials, appeals and review at the institutional level shall be as follows:
 - (a) Each inmate shall be provided with a copy of the decision by the Superintendent to deny or approve program participation.
 - (b) Each denial shall include a review date within 90 days.
 - (c) The inmate may appeal the decision of the Classification Committee or of the Superintendent according to the classification appeal process provided for in 103 CMR 420.00: *Classification Policy*.

464.10: General Rules

- (1) An inmate participating in a work release program remains in the custody of the Department and is subject to the rules and regulations of the Department and the facility/institution. An inmate is subject to the direction of the staff of the facility/institution during the period of his participation in the program.
- (2) Inmates participating in work release programs may be housed in state correctional institutions, county correctional facilities and contract facilities subject to the approval of the Commissioner. Work release participants shall be housed only with other pre-release status inmates and minimum security inmates.
- (3) No inmate shall be assigned to employment in the performance of a federal contract unless the following terms and conditions of United States Executive Order #11755 are met:
 - (a) the inmate is paid or is in an approved work training program on a voluntary basis;
 - (b) representatives of the involved local union central bodies or similar involved labor union organizations have been consulted;
 - (c) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts or trades of which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (d) the rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.
- (4) Each employee shall inform his employer or prospective employer that he is in a work release program of the Department.

464.10: continued

- (5) The facility/institution Work Release Coordinator shall ensure that the Employment Agreement Form is completed and signed prior to the first day of employment, unless otherwise authorized by the Superintendent. If an employer is not cooperative in providing the necessary information or in completing and signing the Employment Agreement Form, the employment site will not be approved.
- (6) An inmate may not be hired or assigned at a work place where there exists any strike or work stoppage arising from a labor dispute of any kind.
- (7) Inmates participating in work release programs may not be gainfully employed by the Department.
- (8) The rates of pay and other conditions of employment for an inmate participating in Work Release Programs shall be the same as those paid or required in the locality in which the work is performed, provided that no inmate employed by an agency of the Commonwealth shall be subject to M.G.L. c. 30, §§ 9A and 9B or M.G.L. c. 31.

464.11: Approval Process for Release on Permit

- (1) An inmate approved for participation in a Work Release Program shall receive an orientation to the rules and regulations concerning community release and shall signify his understanding by signing a Community Release Agreement.
- (2) An inmate approved for participation in a Work Release Program shall meet with the Work Release Coordinator or his designee who shall:
 - (a) review the inmate's employment background;
 - (b) assist the inmate in developing an individual employment program based on the inmate's goals and needs;
 - (c) verify employment background when appropriate;
 - (d) refer the inmate to diagnostic services and other education and training programs as indicated;
 - (e) establish and verify appointments for interviews, applications, and other activities required for obtaining employment; and
 - (f) upon approval, forward the Community Release Permit to the Superintendent or his designee for approval.
- (3) Prior to approval to begin work at a particular site, the Superintendent or his designee shall confirm:
 - (a) that a job has actually been offered;
 - (b) that the employer is a legitimate organization, and that the work-site does not present a threat to public safety or the inmate;
 - (c) that the job offered is suitable for the inmate;
 - (d) that the Work Release Coordinator has interviewed the prospective employer to discuss the conditions of the inmate's employment and to familiarize the prospective employer with the Work Release Program and its procedures and regulations; and
 - (e) that the prospective employer has completed and signed the Employment Agreement Form.

464.12: Release Authorization

- (1) The Superintendent may authorize release of an eligible inmate by signing his approval on the Community Release Permit.
- (2) Each inmate participating in a work release program shall read or have read to him the Community Release Permit, and sign same. The inmate shall carry a copy of his permit at all times while participating in the Work Release Program. The permit will contain at minimum the following information:

464.12: continued

- (a) the address, telephone number and name of contact person(s) at the place of employment;
 - (b) the time at which the inmate is to leave the correctional facility and the time by which he must return each day;
 - (c) the time at which the inmate is expected to arrive at the place where he is working and the time at which he is expected to leave;
 - (d) a current schedule of work hours indicating where the inmate is to be at all times while participating in a work release program;
 - (e) transportation arrangements;
 - (f) the name, address and telephone number of the correctional or contract facility at which the inmate is housed; and,
 - (g) any conditions to his employment as authorized by the Work Release Coordinator.
- (3) The Superintendent or his designee shall ensure that verification is made of the work site, the specific times and any contact person(s).
- (4) The Superintendent or his designee shall ensure that a review is made of the inmate's suitability for the specific program(s) specified on the permit. In considering the suitability of the specific program, the location of the program, transportation, cost and ability to pay, accountability, the number of hours in the community, and conditions such as check-ins, call-ins and staff field visits should be taken into consideration.

464.13: Employment

- (1) Inmates participating in a Work Release Program shall immediately report to the Work Release Coordinator all changes in the conditions of their employment. Changes to be reported include, but are not limited to, the following:
- (a) Rate of pay;
 - (b) Supervisor;
 - (c) Days off;
 - (d) Work schedule;
 - (e) Vacations;
 - (f) Holidays;
 - (g) Personal days;
 - (h) Telephone Number;
 - (i) Financial Deductions (*See* 103 CMR 464.14.).
- (2) An inmate must have prior approval from the appropriate facility/institution staff in order to perform overtime work or otherwise extend his release time. The extension must be verified with the work site contact person by facility/institution staff prior to approval being given.
- (3) In the event of an accident on the job, the inmate or his work supervisor shall notify the appropriate facility staff of the extent of injury and action taken. Should the inmate require hospital treatment, the facility staff shall notify the appropriate Health Services unit or Health services duty officer of all pertinent information regarding the accident, including the source of payment. If hospitalization is required, the facility staff shall follow the procedures detailed in 103 DOC 604: *Outside Hospital Relations*.
- (4) Inmates in Work Release Programs shall not be allowed to work in field sales.
- (5) Inmates with a history of drug abuse, sex offenses or crimes against children shall be discouraged from employment in counseling or caretaking positions with children, and such employment shall be allowed only with the approval of the Superintendent and the Associate Commissioner.
- (6) Inmates with a history of drug abuse or sex offenses shall not be allowed to work in hospitals except with the approval of the Superintendent and the Associate Commissioner. (*See* 103 CMR 457.00: *State School/Hospital Programs*.)

464.13: continued

(7) Self-employment for inmates in Work Release Programs shall be discouraged, and shall be allowed only with the approval of the Superintendent and the Associate Commissioner. Approval will be contingent upon the inmate's ability to establish that he:

- (a) is continuing in a business or trade held prior to incarceration;
- (b) has a workplace other than the confines of the facility/institution to conduct the business enterprise;
- (c) is able to satisfy all local, state, and federal regulations pertaining to the operation of the business, including licenses, taxes and related requirements;
- (d) is financially able to conduct all aspects of the business, including paying himself an appropriate salary;
- (e) is able to maintain accurate business records; and ,
- (f) has a telephone at the place of business.

Notwithstanding satisfaction of these conditions, the Superintendent or the Associate Commissioner may deny any request for self-employment if in his opinion said employment would present a risk to the security of the institution or to the safety of any inmate, employee, visitor or the public.

(8) Inmates shall not be allowed to work for a business owned and/or operated by an ex-felon.

464.14: Financial Deductions

(1) Deductions from the work release income of inmates in contract facilities shall be based on the contract or agreement between the Commissioner and the contract facility, and such agreement shall provide for the amount of money to be charged by the contract facility to the inmate for services to be provided to an inmate.

(2) The procedures for processing the work release monies of inmates participating in a Work Release Program in a state correctional facility/institution shall be as follows:

- (a) The employer shall, in accordance with the Employment Agreement Form which he has signed, mail or deliver the inmate's pay and statement of earnings to the designated staff at the facility/institution;
- (b) The employer shall deduct applicable federal, state, and local taxes and must indicate these deductions on the check or check stub;
- (c) An inmate may not take cash advances or loans from his employer, or arrange for deductions from his wages for a payroll savings plan, bonds, or any other deductions unless such deductions are directly related to his work, such as uniforms, meals consumed on the premises, or union dues;
- (d) The designated facility/institution staff shall make the following deductions from the inmate's paycheck:
 1. 15% of the gross earned income to reimburse the Commonwealth for the expense of providing services to the inmate. Gross income shall include all jobs, part-time and full-time, as well as all overtime. The amount deducted pursuant to this section shall be credited to the General Fund of the Commonwealth and shall not be expended by the Department or by any facility/institution without appropriation by the General Court;
 2. Repayment of any Cash Advance owing;
 3. The amount for the support of the inmate's spouse and children as ordered by the court;
 4. The amount established for family support in consultation with representatives of the Public Welfare Department;
 5. Any amounts voluntarily agreed upon by the inmate for family allotment or for other purposes as approved by the Superintendent;
 6. Savings as required by the facility/institution policy;
 7. The balance to be credited to the inmate's personal institutional account. This may be expended on behalf of or by the inmate in accordance with facility/institution rules and regulations; and
- (e) Each facility/institution shall encourage inmate savings to assist in successful reintegration upon release, and shall establish a minimum amount of savings of not less than \$50.00 to be maintained until release.

464.15: Absence from Employment Site

- (1) Inmates who do not report to work as a result of illness must:
 - (a) notify the designated staff of the facility/institution prior to the start of his scheduled shift;
 - (b) notify his employer in accordance with the employment procedures at the work site;
 - (c) adhere to any facility/institution rules and regulations regarding such absences; and
 - (d) have approval of the designated facility/institution staff.
- (2) Inmates who, for reasons other than illness, do not report to work as scheduled must:
 - (a) notify the designated staff of the facility/institution prior to the start of his scheduled shift;
 - (b) have a legitimate reason (a furlough or visit is not considered a legitimate reason);
 - (c) have the approval of the designated facility/institution staff;
 - (d) notify his employer prior to the start of his scheduled work shift; and
 - (e) adhere to any facility/institution rules and regulations regarding such absences.

464.16: Termination of Employment

Any inmate who wishes to terminate his job must:

- (1) Discuss the situation with designated staff and obtain their approval to leave; and
- (2) If approved, provide reasonable notice to his employer of his intent to leave (one or two weeks as required by employer).

464.17: Escape Procedures

- (1) An inmate shall be declared an escapee if:
 - (a) He leaves his place of employment without authorization by facility/institution staff, and does not return to his place of employment or to the facility within two hours;
 - (b) He does not arrive at the location specified on his Community Release Permit by the scheduled time, and does not arrive there or return to the facility within two hours;
 - (c) He does not return to the facility within two hours after having been ordered to do so; or
 - (d) He fails to return to the facility within two hours of his scheduled return time.
- (2) Notwithstanding the above, an inmate may be declared an escapee at any time if, in the opinion of the Superintendent, there is enough evidence to reasonably assume that the inmate has escaped.
- (3) In the event that an inmate is declared an escapee under 103 CMR 464.16, the escape procedures outlined in 103 DOC 550: *Escape Procedures*, shall be followed. Such procedures shall include notification of the inmate's employer.

464.18: Program Monitoring

Each Superintendent shall ensure that appropriate procedures are followed to maintain inmate accountability. Such procedures shall include, but not be limited to:

- (1) Verification of appointments, schedules, program sites, transportation and contact persons;
- (2) A system of telephone checks, field visits, check-in procedures, attendance and salary reporting; and,
- (3) A complete record-keeping system (*See* 103 CMR 464.19.).

464.19: Record-keeping

A comprehensive record-keeping system shall be maintained which includes, but is not limited to:

- (1) An entry in the case record when an employment begins and terminates;
- (2) A record of the Community Release Agreement and the Employment Agreement Form;
- (3) Submission of the monthly Work Release Report to the Research Unit;
- (4) Log entries of departure and return times, logs of telephone checks and reports of field visits; and
- (5) Records providing information including: inmate's place of employment; inmate's gross pay, employer deductions, facility deductions, any other deductions, and the amount credited to the inmate's account; evaluations; reports and other relevant information.

464.20: Evaluation

- (1) Facility/institution Work Release Programs shall be evaluated quarterly and annually, as provided for in 103 DOC 111: *Management Analysis, Survey and Evaluations*, with written reports being included in the quarterly and annual reports of the facility. The staff performance of Work Release responsibilities shall be evaluated at least annually as provided for in 103 DOC 222: *Employee Performance Evaluation*.
- (2) The research division shall conduct an annual evaluation of the Work Release Program.
- (3) The Commissioner will establish an annual management review of the facility/institution and research division evaluations of the Work Release Program.

464.21: Community Support and Job Development

Each Superintendent shall encourage public understanding of the work release process by sharing, whenever possible, evaluations and reports pertaining to the Work Release Program and the benefits thereof with the community.

464.22: Responsible Staff

The Superintendent of each institution shall be responsible for the implementation of 103 CMR 464.00, and for the development of all procedures deemed necessary for his institution.

464.23: Annual Review Date

103 CMR 464.00 shall be reviewed at least annually from the effective date by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating that the review has been completed. Recommendations for revisions, additions and deletions shall be included.

464.24: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 464.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 464.00.

REGULATORY AUTHORITY

103 CMR 464.00: M.G.L. c. 124, § 1. c. 127, §§ 48, 49, 49A 86F.