

103 CMR: DEPARTMENT OF CORRECTION

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

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464.01: Purpose

The purpose of 103 CMR 464.00 is to establish Department of Correction (Department or DOC) guidelines governing work release programs for inmates. The establishment of employment programs for inmates outside correctional institutions is intended to provide inmates with the opportunity to develop positive work habits, learn new, or hone existing, skills, and to provide a means for inmates to earn and save money for use upon release or parole, all of which contribute to successful reentry of inmates into the community. Although not always feasible due to the location of a correctional institution, a work release program offers an inmate the opportunity for employment that may be sustained upon release or parole. 103 CMR 464.00 sets forth the requirements for participation in, and the procedures for, the administration of the work release program.

464.02: 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.

464.03: Applicability

103 CMR 464.00 is applicable to all employees and criminally sentenced inmates eligible pursuant to M.G.L. c. 127, § 49 at correctional institutions within the Department. 103 CMR 464.00 is not applicable to correctional programs operated pursuant to 103 CMR 455.00: *Correctional Industries*. 103 CMR 464.00 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

464.04: Access to 103 CMR 464.00

103 CMR 464.00 shall be maintained within the Department's Central Policy File 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. Internet access for this policy may be obtained at:

<http://www.mass.gov/eopss/law-enforce-and-cj/prisons/doc-policies/policy-list>.

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464.05: Definitions

Classification Board. A committee of three DOC employees which make recommendations concerning an inmate's custody level and program participation.

Commissioner. The chief executive officer of the Department.

Department. Department of Correction.

Deputy Commissioner of Clinical Services and Reentry. A Department Deputy Commissioner whose duties include, but are not limited to, the management of the Classification Division, Inmate Education and Training Division, Reentry and Program Services Division, and the Health Services Division.

Earned Income. Income derived from a source of employment including wages, salary, and commissions, consistent with the Internal Revenue Service codes.

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

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

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

Inmate. For the purposes of 103 CMR 464.00, any person serving a sentence under the law or otherwise in the legal custody of the Department.

Inmate Management Systems (IMS). The Department's automated information system that provides processing, storage and retrieval of inmate-related information needed by Department personnel and other authorized users within the criminal justice system.

Superintendent. The chief administrative officer of a state correctional institution.

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

464.06: Authorized Activities

Work Release activities include employment, 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.

464.07: 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 or her sentence, have attained pre-release status, and be otherwise eligible under M.G.L. c. 127, § 49 and other applicable laws.

464.08: Approval Process for Program Participation

(1) The review of an eligible inmate for work release shall be conducted in accordance with 103 CMR 420.00: *Classification*, and shall be approved by the Superintendent or designee.

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- (2) Any inmate may appeal a work release decision in accordance with 103 CMR 420.00: *Classification*.
- (3) Within 14 days of transfer to pre-release status, staff shall recommend to the Superintendent or designee, *via* the classification process, whether an inmate is suitable for work release.

464.09: General Rules

- (1) An inmate participating in a work release program remains in the Department's custody and is subject to the Department's rules and regulations, as well as those of the facility/institution where he or she is incarcerated, during the period of his or her participation in the program.
- (2) Inmates participating in work release programs may be incarcerated in state correctional institutions, county correctional facilities, or community contract beds, subject to approval by the Commissioner.
- (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, December 29, 1973, as amended by United States Executive Order #12608, September 9, 1987, and United States Executive Order #12943, December 13, 1994 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 shall 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.
 - (e) The United States Attorney General has certified that the work release laws and/or regulations of the Commonwealth are in conformity of the aforementioned United States Executive Orders.
- (4) Prior to hiring, each inmate shall inform his or her employer or prospective employer that he or she is in a work release program of the Department.
- (5) 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.
- (6) 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 c. 31.
- (7) The Superintendent or designee shall approve Community Release Permits *via* the designated IMS screens prior to any work related release.

464.10: Pre-employment Procedures

- (1) Prior to approving an inmate for employment at a particular site, the Superintendent or designee shall confirm that:
 - (a) A job has actually been offered;
 - (b) The employer is a legitimate organization;
 - (c) The work site does not present a threat to public safety or the inmate; and
 - (d) The inmate is suitable for the job;
 - (e) The Employment Services Coordinator or his or her designee has conducted an in-person interview of the prospective employer, except that phone interviews will be permitted when employers previously have been part of the work release program. The interview shall include, but not be limited to, reviewing the conditions of the inmate's employment, providing an orientation for the prospective employer of the work release program and its procedures and regulations (the orientation shall be documented and maintained by the institution);

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- (f) The prospective employer has satisfactorily completed and signed an Employment Agreement Form. The signed form shall be maintained in the inmate's six-part folder after all necessary information has been entered in the designated IMS screens;
- (g) The local police, in the community where the inmate will be employed, have received notification that the inmate will be so employed. Police notifications shall be documented in the designated IMS screens and a copy of the notification maintained in the inmate's six part folder.

(2) 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 or her understanding by signing a Community Release Agreement. An entry into the designated IMS screens shall be made and the Community Release Agreement filed in the inmate's six-part folder.

(3) An inmate approved for participation in a work release program shall meet with the Employment Services Coordinator or 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 history 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. Verification of appointments shall be documented in designated IMS screens.

(4) Pursuant to M.G.L. c. 152, § 74, the Worker's Compensation statute does not apply to "inmates of institutions performing labor under sections forty-eight to seventy-seven, inclusive of chapter one hundred and twenty-seven".

(5) Inmates taking part in the Department's work-release program are not eligible to collect unemployment benefits under M.G.L. c. 151A, regardless of the reason for the termination from the program.

464.11: Release Authorization

(1) The Superintendent or a designee may authorize an eligible inmate for release by signing his or her approval on the Community Release/Permit.

(2) The Superintendent or a designee shall ensure that a review is made of the inmate's suitability for the specific program(s) specified on the release permit. In reviewing the inmate's suitability, the Superintendent or designee shall take into consideration:

- (a) The program's location;
- (b) Transportation costs and the inmate's ability to pay the same;
- (c) Level of accountability;
- (d) The number of hours the program requires the inmate to spend in the community;
- (e) The specific conditions set by the Employment Services Coordinator or designee (*e.g.*, check-ins, call-ins and staff field visits). Once the Superintendent or designee is satisfied as to the inmate's suitability, he or she shall sign the work release permit.

(3) Each inmate participating in a work release program shall read or have read to him or her the Community Release Permit, and sign the same. The inmate shall carry a copy of his or her permit at all times while participating in the Work Release Program. The permit shall contain, at a minimum, the following information:

- (a) The employment site's address, telephone number and name of contact person(s);
- (b) The inmate's daily departure and return times to and from the correctional facility;
- (c) The estimated time of arrival at the employment site and the expected time of departure;
- (d) The inmate's current schedule of work hours indicating the inmate's whereabouts at all times;

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- (e) The inmate's transportation arrangements;
 - (f) The name, address and telephone number of the correctional facility where the inmate is housed;
 - (g) Any conditions of employment as authorized/stipulated by the Employment Services Coordinator or his or her designee.
- (3) The Superintendent or a designee shall ensure that the work site, specific times of employment and the name(s) of any contact person(s) are verified and shall document such verification in the Employer Agreement Information/Verification Date.

464.12: Employment

- (1) Inmates participating in a work release program shall immediately report all changes in the conditions of their employment to the Employment Services Coordinator or his or her designee. 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 numbers;
 - (i) Financial deductions (*See 103 CMR 405.08: Mandatory Work Release Deductions and 405.09: Voluntary Work Release Deductions*);
 - (j) Any work-related injuries.
- (2) An inmate must have prior approval from the appropriate facility/institution staff in order to perform overtime work or otherwise extend his or her release time. Prior to approving the extension, facility/institution staff shall verify with the work site contact person whether overtime is available. Changes and approvals shall be documented in IMS by the Employment Services Coordinator or designee.
- (3) In the event of an accident on the job, the inmate or his or her work supervisor shall notify the appropriate facility/institution staff of the extent of injury and action taken. Should the inmate require hospital treatment, staff shall notify the appropriate health services unit or health services duty officer of all pertinent information regarding the accident. If hospitalization is required, the facility staff shall follow the procedures detailed in 103 DOC 604: *Outside Hospital Relations*.
- (4) Inmates shall not be allowed to work as follows:
- (a) At commission based sales/wages;
 - (b) In caretaking/counseling positions with children;
 - (c) At businesses owned or operated by family members of the inmate;
 - (d) Inmates shall not be self-employed.

464.13: Financial Deductions

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 mail or deliver the inmate's pay and statement of earnings to the facility/institution Treasurer.
- (b) The employer shall deduct applicable federal, state, and local taxes, and any court ordered wage garnishments. The employer shall indicate these deductions on the check or check stub.

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- (c) An inmate shall not take cash advances or loans from his or her wages for a payroll savings plan, bonds, or any other deductions unless such deductions are directly related to his or her work, such as uniforms, or union dues, and approved in advance by the Superintendent.
- (d) The Treasurer shall make deductions from the inmate's paycheck in accordance with 103 CMR 405.08: *Mandatory Work Release Deductions* and 405.09: *Voluntary Work Release Deductions*.
- (e) Each facility/institution shall encourage inmate savings to assist in successful reentry upon release in accordance with 103 CMR 405.00: *Inmate Funds*.
- (7) A record of all transactions shall be maintained in accordance with 103 CMR 405.00: *Inmate Funds*.

464.14: Absence from Employment Site

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

464.15: Termination of Employment

Any inmate who is considering resigning from his or her job shall first:

- (1) Discuss the situation with the Employment Services Coordinator or his or her designee.
- (2) Provide reasonable notice to his or her employer of his or her intent to leave (one or two weeks as required by employer).

464.16: Escape Procedures

- (1) An inmate shall be declared an escapee if:
 - (a) He or she leaves his or her place of employment without authorization by facility/institution staff, and does not return to his or her place of employment or to the facility/institution within two hours.
 - (b) He or she does not arrive at the location specified on his or her Community Release Permit by the scheduled time, and does not arrive there or return to the facility/institution within two hours.
 - (c) He or she does not return to the facility/institution within two hours after having been ordered to do so.
 - (d) He or she fails to return to the facility/institution within two hours of his or her scheduled return time.
- (2) Notwithstanding 103 CMR 464.16(1)(a) through (d), an inmate may be declared an escapee at any time if, in the opinion of the Superintendent or designee, 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.

464.17: Inmate Accountability and Record Keeping

To ensure accountability practices and proper documentation, each institution's Employment Services Coordinator and/or security staff shall comply with the following:

- (a) Verification and documentation of all appointments, schedules, program sites, transportation and contact person(s).
- (b) Documentation and retention in the inmate's six-part folder of all signed community release agreements, signed work release agreements, police notifications, permits and any correspondence from the employer.
- (c) The Employment Services Coordinator or his or her designee shall maintain all work release related IMS screens.
- (d) Physical spot checks shall be conducted at least once per month. Telephone checks shall be made at the discretion of the Superintendent. All checks shall be documented in the designated IMS screen.
- (e) The designated IMS screens shall be reviewed on a regular basis to determine if any inmates are past due for a telephone call in or return to the facility/institution.

464.18: Evaluation

The Research Division shall report descriptive statistics annually on the work release program with comparisons to the previous year, where relevant.

464.19: 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.

464.20: Emergency

Whenever, in the opinion of the Commissioner or designee, or the Superintendent of a state correctional facility, an emergency exists which requires suspension of all or part of 103 CMR 464.00, the Commissioner or designee or the Superintendent may authorize such suspension, provided that any suspension lasting more than 48 hours must be approved by the Commissioner.

464.21: Responsible Staff

The Superintendent of each institution, under the direction of the Deputy Commissioner of Clinical Services and Reentry, shall implement 103 CMR 464.00, and develop procedures deemed necessary for his or her institution.

464.22: Annual Review Date

103 CMR 464.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

464.23: Severability Clause

If any article, section, subsection, clause or phrase of 103 CMR 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 106 CMR 464.00.

REGULATORY AUTHORITY

103 CMR 464.00: M.G.L. c. 124, §§ 1(c) and (e).