

November 23, 2021

Jackie Bray
Acting Commissioner
New York State Division of Homeland
Security and Emergency Services
Building 7A
Harriman State Office Campus
Albany, New York 12242

Re: NYS IG 1375-168-2020

Dear Commissioner Murphy:

On June 6, 2020, the New York State Offices of the Inspector General received an allegation that New York State Division of Homeland Security and Emergency Services (DHSES) employees temporarily assigned to COVID-19 worksites were receiving financial reimbursement for meals to which they were not entitled. Specifically, it was alleged that although these employees were provided with free meals at the worksites, they also inappropriately collected meal per diems.

The Inspector General's investigation of this allegation could not be substantiated due to a lack of corroborating evidence. The investigation found that DHSES has no policy requiring its employees to document whether they were provided and consumed meals while in travel status. Additionally, the investigation found many DHSES employees were unfamiliar with applicable State travel policies including those policies requiring specific documentation when claiming meal per diems in such scenarios.

By way of background, in response to the COVID-19 pandemic, New York State opened numerous emergency operation centers including COVID-19 testing and vaccination sites and storage facilities for purchased and donated supplies. These sites, which had extended hours of operation, were staffed by temporarily redeployed employees from numerous State agencies.

As a measure of goodwill and to minimize unnecessary travel during the pandemic, daily meals were provided without charge to staff at many of these sites. Sites at which DHSES staff were assigned had a designated "food leader" who was responsible for contacting local restaurants, placing weekly food orders, verifying receipt of meals, and distributing meals throughout the day. The food leader was also responsible for submitting meal invoices to DOH and other funding agencies to be paid.

Procedures at these sites for taking and recording food orders and establishing whether an employee accepted a meal varied greatly. The investigation found inconsistent recordkeeping of employees' meals. Some sites maintained both electronic and paper records to track such meals, others maintained only paper records, and still other sites failed to maintain any such records.

A State employee may not obtain meal per diems when meals have been provided to that employee by a State agency without charge. The Office of the New York State Comptroller's (OSC) Travel Manual, which requires State employees to disclose on submitted travel expense reports if they are provided meals by an agency without charge, advises that "meals when provided at no cost to the employee by a State agency or third party as part of an assignment are not reimbursable."¹ In addition, on May 7, 2021, OSC issued "Travel Advisory No. 17," reminding agencies:

[E]mployees are **not entitled** to a per diem meal allowance on a day they consumed a meal provided to them. This policy includes meals provided to employees at unique assignments such as COVID-19 testing and vaccination sites. In such circumstances, if the employee requests a per diem meal allowance on an expense report, the employee must include documentation to support the employee declined the meal provided at the site. (Emphasis original.)

The advisory also stipulates that supervisors and agencies are responsible for ensuring their employees, particularly those assigned to COVID-19 worksites where meals are provided, are entitled to meal per diems if claimed.

Despite these requirements, the Inspector General's investigation found that DHSES lacked a clear policy instructing its employees on proper procedures for claiming meal per diems when working at a location where meals are provided. The investigation also found that contrary to OSC policy, some DHSES employees assigned to COVID-19 worksites did not report on submitted travel vouchers whether the site had provided meals without charge and did not submit documentation supporting their declination of a provided meal. Moreover, some DHSES staff advised the Inspector General they had no recollection of being trained on OSC's Travel Manual and simply relied on word of mouth as to agency policy. Employees who refused meals and collected meal per diems advised they were unaware of the need to obtain proof of such a refusal to attach to their per diem submission. It was not until the Business Services Center notified DHSES that such documentation was necessary that those employees learned of such a requirement.

DHSES' failure to implement policies and procedures to ensure its employees were complying with OSC rules for meal per diems prevented the Inspector General from concluding whether DHSES employees were entitled to receive these per diems.

¹ Office of the New York State Comptroller Travel Manual, Meals and Lodging Provided by Agency (Revised December 14, 2015).

While the Inspector General recognizes the mass purchasing and distribution of meals to staff on a regular basis was unique to the COVID-19 pandemic, the Inspector General recommends that DHSES take the following actions:

- Promulgate policy and implement procedures for the claiming of meal per diems by employees working at locations where meals are provided. These policies and procedures should include supervisory oversight of employee compliance with all travel rules and require employees to acknowledge that by accepting a free meal, they are ineligible for a meal per diem.
- Ensure employees are properly trained on all applicable State travel rules, particularly those addressing meal reimbursement.
- Maintain supporting documentation for employee travel in accordance with State and agency record retention schedules, including documentation of employees' acceptance or declination of agency provided meals.

Please advise me of the action taken by DHSES in response to these recommendations within 45 days of the date of this letter. If you require further information, please contact Special Deputy Inspector General Lynn Tabbott at

[REDACTED]

Sincerely,

[REDACTED]

Robyn Adair
Acting Inspector General

Cc: Elisha Tomko, Esq.
General Counsel