



**Offices of the
Inspector General**

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Inspector General

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July 22, 2021

Cathy Sheehan, Esq.
Counsel and Deputy Commissioner
New York State Department of Corrections
and Community Supervision
1220 Washington Avenue
Albany, New York 12226

Re: NYS IG 1922-316-2018

Dear Counsel and Deputy Commissioner Sheehan:

Thank you for your correspondence of February 23, 2021, in regard to this office's investigation of Correction Officer [REDACTED] and DOCCS staff usage of facilities' gyms and weight rooms policy.

Upon review of the proposed Staff Use of Facility Resources Release of Liability Waiver, please note that New York State Workers' Compensation Law provides that "[n]o agreement or release . . . by an employee to waive his right to compensation under this chapter shall be valid" except as provided under Section 32 of the Workers' Compensation Law where an employee settles his claim and the agreement has been reviewed and approved by the Workers' Compensation Board. See NY WCL §32. However, while an employee may not prospectively waive an otherwise valid Workers' Compensation claim, no valid claim exists "where the injury was sustained in or caused by voluntary participation in an off-duty athletic activity not constituting part of the employee's work-related duties unless the employer (a) requires the employee to participate in such activity, (b) compensates the employee for participating in such activity or (c) otherwise sponsors the activity." NY WCL §10(1).

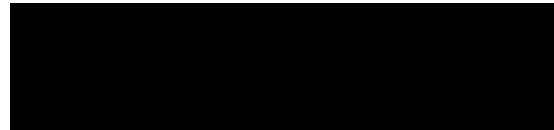
Based upon the foregoing, I recommend supplementing the draft release to include the exceptions noted under Workers' Compensation Law section 10(1). Specifically, I recommend that the release include language noting that the employee's signature on the release acknowledges (1) that usage of the facilities is considered voluntary participation in an off-duty athletic activity and does not constitute a part of the employee's work-related duties; (2) that the employee is not required by DOCCS to utilize the facilities or engage in the

activity; (3) that the employee is not compensated for such activity or the employee's time in engaging in the activity; and (4) that DOCCS does not sponsor the activity engaged in by the employee.

I further recommend that DOCCS consult with the New York State Insurance Fund to review the proposed policy and draft release to the extent its intent is to avoid exposure to future Workers' Compensation claims through employees' use of DOCCS' facilities while off-duty.

If we can be of further assistance in this matter, please contact me at 518.474.1010.

Sincerely,



Robyn Adair
Chief Deputy Inspector General