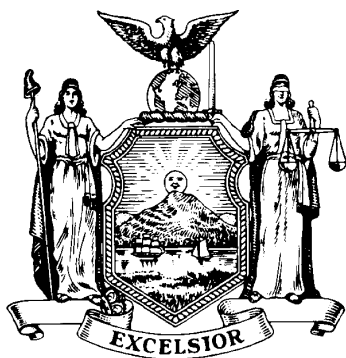


State of New York
Offices of the Inspector General



Review of the Lost Wage Benefit Provided to
Security Services Unit Employees Within the
New York State Department of Corrections
and Community Supervision

May 2023

Lucy Lang
Inspector General

EXECUTIVE SUMMARY

The workers' compensation system serves as a long-standing and vital safety net for those who are injured at work. In light of the heightened safety risks inherent in the performance of certain occupations, some New York State employees are afforded more generous workers' compensation benefits in the event of a work-related injury. One such group of employees are those in the Security Services Unit represented by the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA), which includes New York State Department of Corrections and Community Supervision (DOCCS) correction officers and other New York State security personnel.

In short, and unlike the vast majority of employees covered by the Workers' Compensation Law, these Security Services Unit employees are entitled to up to six months of full pay from their employer upon the occurrence of an occupational injury or disease, without having to choose between using their accrued leave time or receiving less than their full pay through the New York State Insurance Fund (SIF), the State's workers' compensation insurance carrier.¹ Upon completion of the first six months of any claim, the employee may then charge their accrued leave credits to continue receiving full pay, after which lost wage benefits are paid by SIF pursuant to Workers' Compensation Law. Lost wage benefits are calculated based upon two thirds of the employee's average weekly wage, up to a cap that varies yearly.

Since the enactment of DOCCS' collectively bargained labor contract in 2015, the Offices of the New York State Inspector General² has received hundreds of complaints alleging that DOCCS correction officers are abusing the lost wage benefits afforded to them under that agreement. These complaints have been echoed by staff at many of the 44 DOCCS correctional facilities visited by the Inspector General over the past year, and have resulted in a daily struggle to simultaneously ensure safety while maintaining the delivery of critical services in the face of significant workers' compensation-driven staffing shortages.

Examination of the relevant numbers paints the picture of a burgeoning crisis. During fiscal year 2020-2021, DOCCS had to cover nearly 1.8 million hours of staff time as a result of

¹ The Agency Police Services Unit, which is comprised of certain personnel who have police duties and responsibilities and are employed with the State University of New York; Department of Environmental Conservation; and the Office of Parks, Recreation and Historic Preservation; also retains the same lost wage benefits in its contract with the State. This unit is comprised of approximately 1,200 members, as compared to the Security Services Unit with approximately 26,000 members. This lost wage benefit is also available to DOCCS captains represented by Council 82.

² The Offices of the New York State Inspector General (OIG) is comprised of four offices: the Office of the New York State Inspector General (NYSIG), the Office of the Welfare Inspector General (OWIG), the Office of the Workers' Compensation Fraud Inspector General (WCFIG), and the Office of the Gaming Inspector General (OGIG).

workers' compensation absences, a nine percent increase from the year prior, and a 61 percent increase over the prior decade. This, despite the fact that in fiscal year 2019-2020, roughly two out of three workers' compensation claims filed by correction officers attributed the injury at issue to an on-the-job cause unrelated to physical contact with an incarcerated individual. Not only have these increases brought with them a dramatic rise in spending for overtime, but also a dramatic decrease in morale for those officers compelled to perform it.

During the seven-year period examined by this office (2015 to 2021), the Inspector General observed that, at approximately 10 percent of DOCCS correctional facilities, on average, one in three correction officers filed a workers' compensation claim.³ This situation is brought into even further contrast when viewed through the lens of a single day. For example, more recently, on December 26, 2022, eight facilities had 10 percent or greater of their entire security staff out on workers' compensation leave, with three facilities topping 17 percent—meaning one out of every six security staff members was unavailable to work. These widespread absences created coverage gaps that needed to be filled by their unscheduled colleagues, resulting in upended holiday plans for colleagues unexpectedly required to work the day after Christmas. Remarkably, on average for the eight facilities referred to above, approximately 70 percent of the claims associated with the absences on this date did not involve any contact with incarcerated individuals, with one facility at over 90 percent.⁴ This is of particular note in light of the fact that, ostensibly, the greater benefit afforded this group is in recognition of the physical risks associated with regular inmate contact.

In response to these statistics, the complaints received by this office, and information garnered from staff visits to DOCCS correctional facilities, the Inspector General directed the Attorney-in-Charge of Workers' Compensation Fraud and the Attorney-in-Charge of DOCCS Matters to conduct a review of this workers' compensation-fueled staffing crisis to determine the extent of any potential fraud and to identify possible underlying causes.

In order to fulfill its vital purpose, the workers' compensation system requires the honesty of all, and abuse of the program imperils its continuing availability for all. There is no doubt that serving as a correction officer is a difficult and dangerous profession, and that DOCCS staff are just as entitled as any New Yorker to make use of the critical benefits that the workers'

³ This analysis assumed each workers' compensation claim reported in a given year at each facility was attributed to a unique DOCCS employee and is, thus, just an estimate. While the effect on these statistics would likely be minimal, the analysis does not adjust for employees who filed multiple claims in the same year.

⁴ DOCCS includes any and all injury claims that involve an incarcerated individual as "incarcerated individual contact." This designation includes injuries claimed during staff uses of force, assaults on staff, injuries claimed while running to a distress call, and mental or emotional distress claims related to incarcerated individuals' actions.

compensation system provides. This review by no means seeks to impugn the integrity of hardworking and dedicated public servants who are legitimately injured at work, or of DOCCS employees generally. But to the extent that workers' compensations claims made by DOCCS correction officers dwarf those of other security personnel, both within their bargaining unit and at similarly situated agencies and in number and duration, further investigation is warranted.

As the New York State Office of Employee Relations (OER) negotiates the terms of the new labor agreement covering correction officers following the recent expiration of the current contract, this report seeks to highlight particular concerns about the existing lost wage provision—largely unique among comparable contracts—that enables correction officers to receive up to six months full pay from DOCCS upon the occurrence of an occupational injury, without having to choose between using any accrued leave time or receiving less than their full pay from the New York State Insurance Fund, the State's workers' compensation insurance carrier. When combined with other available supplemental benefits, and the absence of limitations on one's activities or movements during time spent on leave, this provision appears to have created a strong motivation for fraud as well as a perverse incentive for correction officers to not return to work before those six months have been exhausted, regardless of their ability to do so.

Given the impact that widespread staff absences in correctional facilities have on both the incarcerated population and the remaining DOCCS staff—including decreased morale, forced overtime, staff departures, lack of available programming or recreation, and the safety of all—this office urges all those involved in the negotiation of the new labor agreement covering DOCCS staff to identify and consider these implications in any future contract.

BACKGROUND AND ALLEGATIONS

In December 2018, NYSCOPBA ratified its agreement with OER on a labor contract to cover all State employees in the Security Services Unit, which includes DOCCS correction officers and other New York State security personnel.⁵

Within a year of its effective date, the Offices of the New York State Inspector General began participating in monthly meetings with DOCCS and SIF to address spikes in potentially fraudulent workers' compensation claims at three particular DOCCS correctional facilities. Year after year, these three facilities have some of the highest rates of workers' compensation claims across the DOCCS system. The meetings are intended to expedite the claim review process, ensure

⁵ That agreement, which became retroactively effective as of April 1, 2016, expired on March 31, 2023.

each claim is properly scrutinized, and to proactively identify claims of concern that may warrant further investigation. SIF has also brought numerous concerns of workers' compensation fraud by DOCCS correction officers at other facilities to this office.

Additionally, since the appointment of Lucy Lang as the State Inspector General in November 2021, she has personally met with DOCCS executive staff and the leadership of its internal investigation unit, the Office of Special Investigations, and visited all of DOCCS's 44 correctional facilities, meeting with members of each facility's management as well as security and civilian staff. A common and consistent complaint from each of these constituencies has been that workers' compensation fraud is being committed by DOCCS correction officers on a widespread basis and the effects were reverberating across the entire corrections system.

During the Inspector General's visits to these facilities, she has also met with incarcerated individuals, many of whom have expressed concerns about the conditions of their confinement and limitations on the availability of programming. Some of these concerns can be directly linked to staffing shortages across DOCCS, which are greatly exacerbated by workers' compensation-related absences.

FINDINGS OF FACT

Workers' Compensation Lost Wage Benefits

The current contract with NYSCOPBA governs Security Services Unit employees' workers' compensation benefits, which cover both medical expenses and lost wage benefits arising from an occupational injury or disease. Relative to the lost wage benefits, section 14.9(a) of the current contract provides:

An employee necessarily absent from duty because of occupational injury or disease as defined in the Workers' Compensation Law who is allowed leave from his position for the period of his absence necessitated by such injury or disease shall be: (1) first granted compensation leave with pay without charge to leave credits not exceeding cumulatively six months; and (2) upon exhausting leave pay benefits under (1) above be allowed to draw accrued leave credits; and (3) upon exhausting leave with full pay benefits under (1) and (2) above be allowed sick leave at half pay for which he may be eligible during such leave unless: (i) there is good and sufficient reason to believe that the disability resulting from such injury or disease is not job related or is primarily due to some pre-existing medical condition; (ii) there is good and sufficient reason to believe that the employee could report for work on a full-time or part-time basis; (iii) the employee's services would have been terminated or would have ceased under law; or (iv) the employee's claim for benefit is controverted by the State Insurance Fund.

Unlike the vast majority of employees covered by Workers' Compensation Law, this lost wage benefit affords Security Services Unit employees the ability to receive up to six months full pay from DOCCS upon the occurrence of an occupational injury or disease, without having to choose between using their accrued leave time or receiving less than their full pay through SIF. Upon completion of the first six months of any claim, the employee may then charge their accrued leave credits to continue receiving full pay, after which lost wage benefits are paid by SIF pursuant to Workers' Compensation Law. Lost wage benefits are calculated based upon two thirds of the employee's average weekly wage, up to a cap that varies yearly.

The lost wage provision has proven similarly problematic with regard to New York State Office of Mental Health (OMH) security hospital treatment assistants (SHTAs), who staff various hospital and psychiatric facilities throughout the State, provide services to individuals incarcerated at DOCCS, and are covered by the same Security Services Unit contract. While beyond the scope of this DOCCS-focused review, OMH reports similar staffing deficiencies as well as budget and morale consequences as a result of an extremely high volume of workers' compensation claims. In response, in 2017, investigative staff from OMH, the Offices of the Inspector General, and SIF created a pilot program to address potential fraudulent claims. That program is ongoing as the volume of workers' compensation claims, virtually none of which stem from contact with OMH patients, continues to be extremely high.

This lost wage benefit stands in stark contrast to that which is available to all other State employees who are not members of the Security Services Unit. Indeed, lost wage benefits for Management/Confidential (M/C) employees are limited to the two-thirds average weekly wage calculation as delineated in Workers' Compensation Law. Other unionized employees' lost wage benefits are financially capped and otherwise limited in nature. For employees represented by the Civil Service Employees Association (CSEA) and the Public Employees Federation (PEF), a supplemental wage is paid by the employing agency to ensure they receive 60 percent of their pre-injury compensation for up to nine months. This benefit is only afforded to those who suffered a "total" or "marked" injury documented by a medical professional, and only covers the lost wage gap between the two-thirds average weekly wage benefit and the injured employee's pre-injury compensation.

Thus, as opposed to other State employees, there is no monetary incentive for correction officers to return to work prior to exhausting the six months full pay afforded to them, regardless of their actual ability to do so. Moreover, and unlike members of law enforcement in other states as well as in cities within New York, during the time when a DOCCS employee is out of work due to a claimed injury and being paid their full salary by DOCCS, there is no requirement that they remain at their residence during their ordinary tour of duty, nor is there any limitation on their travel, resulting in reports of troublingly long tropical vacations, relocations to second homes inside and outside the State, and other indicia that undermine the legitimacy of these claims.

Additional Potential Contributing Factors

In addition to the significant lost wage benefit, this office's review revealed other factors that have likely further motivated the systemic abuse of the workers' compensation system by Security Service Unit members, including the use of supplemental insurance, the subjective nature of medical opinions, and the difficulty in prosecuting allegations of fraud.

The review found that DOCCS correction officers who are the subjects of investigations have often acquired supplemental disability insurance policies. These policies are intended to provide an injured worker with the necessary additional funds to maintain their standard of living while unable to work. This is most critical in ordinary circumstances where injured employees are only entitled to two thirds of their salary, or less, through the standard SIF lost wages benefit. In contrast, what it means for DOCCS correction officers who submit workers' compensation claims and are paid their full salary for six months, is that the supplemental insurance facilitates the ability of the employee to collect *more* income than they would have taken home had they remained working.

DOCCS Directive 2202 requires correction officers to submit medical documentation "for all absences for which an employee claims his or her absence is related to an on-the-job injury/illness." For protracted absences (longer than three consecutive workdays), DOCCS requires medical documentation every two weeks, or monthly at the discretion of the medical information officer. There is no requirement during the first six months of absence that medical documentation come from a particular list of approved providers, or, unless the claim is contested by DOCCS, that the claimant be seen by an independent doctor.

DOCCS and SIF also have the right to require a medical examination of an employee to provide an independent expert opinion on an alleged injury. However, these Independent Medical Examinations (IMEs) are rarely sought for claimants who return to work in six months or less due to limited resources and the difficulty of diagnosing many “soft tissue” injuries.⁶ This fact appears to be well known by corrections staff who return to work in large numbers as the initial six-month period is reaching its conclusion.

When IMEs are conducted, the IME physician’s opinion often differs from that of the employee’s personal doctor, which calls into question the true level of injury of the examined employee. Even in the face of such conflicting opinions, however, there is no definitive or efficient way to reach a final determination on the nature and extent of an injury and such cases often require extensive litigation. Also, the nature of competing medical opinions, regardless of the disciplinary appropriateness or level of expertise of the initial evaluating physician, makes either administrative or criminal prosecution for fraud extraordinarily challenging absent admissions or egregious and observable physical acts by the claimant that disprove the disability.

The impact of widespread workers’ compensation claims on the DOCCS workforce is striking and has been increasing steadily since 2018. In its 2019 report on security staffing, DOCCS reported that in fiscal year 2018-2019, DOCCS used 1,545,088 staff hours to cover workers’ compensation absences. As reported by DOCCS in subsequent yearly reports, these coverage hours increased in fiscal year 2019-2020 to 1,645,052, and in fiscal year 2020-2021 to 1,792,644. On average, in 2020 and 2021, there were five facilities that had more than a third of all security staff file workers’ compensation claims. Overall, DOCCS staff hours used to cover workers’ compensation absences have increased by 61 percent in the last decade.

Conversations with administrative staff at various facilities have revealed that, in their experience, compensation claims spike dramatically at consistent times in different regions, be it during the winter holidays, immediately after Memorial Day, or, at a number of upstate facilities, at the start of hunting season. Numerous cases exist of correction officers making workers’ compensation claims based upon soft tissue injuries that impact their ability to work during particular holidays. When these claims are fraudulent, this enables junior officers to circumvent their more senior colleagues who should be entitled to be home with their families for the holiday

⁶ According to Johns Hopkins Medicine, soft tissue injuries include muscle and ligament related bruises, strains, and sprains, which cannot be clearly diagnosed using x-rays or other standard diagnostic tools. As such, IMEs are challenged to diagnose such injuries by relying upon accurate information of symptoms and pain from the reporter.

but who are instead forced to work overtime in a covering capacity. Such conduct clearly impacts morale and also has the ability to impact the facility's operating budget in the form of increased overtime. Yet, despite the highly suspicious timing of these claims, the "soft tissue" nature of many combined with the short periods of disability makes them extremely hard to controvert. And the lost wage provision ensures that there is no financial deterrent to the claimants.

While there has been an overall decrease in the State's prison population and an increase in the concentration of incarcerated violent felony offenders in the majority of DOCCS facilities, there is no apparent trend in the increase of workers' compensation claims due to physical contact between correction officers and incarcerated persons. Strikingly, from 2015 through 2021, on average, 66 percent of all workers' compensation injury claims did not involve contact with an incarcerated person. That is, year after year, on average, the number of claimed injuries *not* involving contact with an incarcerated person is almost double those injury claims that do.⁷

The Inspector General, DOCCS, SIF, and our law enforcement partners are continually investigating those correction officers who would commit workers' compensation fraud, and believe that those who commit fraud should be prosecuted for their crimes. Unfortunately, the number of allegations of suspected workers' compensation fraud by DOCCS employees continues to outpace the resources available to combat them on an individual basis and are undermined by the absences of guardrails in place in comparable contracts, such as restrictions on travel.

Additionally, regardless of the circumstances underlying an injury claim, whenever a DOCCS employee is availing themselves of the lost wage benefit, they continue to accrue full service time towards retirement. This remains the case regardless of the amount of time they are out of work.

Quite simply, it is expected that as long as the monetary incentive to commit workers' compensation fraud exists, and absent potential safeguards, the number of allegations of fraud will persist. To that end, an examination of some of the methods correction officers have utilized to date to defraud the system is illustrative.

⁷ Among the more common injuries not related to contact with incarcerated individuals are slip/trip-and-falls and encounters with doors and office furniture.

TYPES OF IDENTIFIED DOCCS EMPLOYEE FRAUD

Provider Fraud

This past summer, the Offices of the Inspector General, working closely with the Workers' Compensation Board, DOCCS, and SIF, identified a physician who provided medical notes to a vast number of DOCCS employees, many of whom were not from his geographic area. Following a full investigation, including interviews of the physician's former employees, this office substantiated that the physician was falsifying medical prognoses for patients to keep them out of work for extended periods and billing the Workers' Compensation Board for therapy that he never provided. This office referred the results of this investigation back to the Workers' Compensation Board for further action, after which the physician executed an Affidavit of Voluntary Resignation prohibiting him from rendering treatment and care to injured workers for purposes of New York State workers' compensation claims.

Fraudulent Medical Notes

The Offices of the Inspector General have also routinely substantiated instances in which DOCCS employees have submitted fraudulent medical notes to satisfy the requirements of Directive 2202 and have taken advantage of the leave benefits afforded to them. Since the start of the current labor contract, this office has investigated over 400 allegations of correction officers submitting false medical notes, working while collecting benefits, or failing to report a prior non-work injury. Some representative examples of allegations substantiated by this office include:

Use of Falsified Medical Notes to Obtain Seven Months of Benefits (\$38,112)

Shortly after taking workers' compensation leave in April 2015 based upon a purported shoulder injury, a correction officer in the Elmira Hub began submitting falsified medical reports indicating his inability to work based upon medical examinations that never in fact occurred. No independent or secondary medical examination was ever required or conducted. Through the use of these falsified medical records, and accrued sick and personal leave time, the officer remained out of work at full salary through mid-December 2015, despite having moved in August 2015 to North Carolina, thereby violating the New York State residency requirement and making him ineligible to collect the nearly \$5,000 in sick and personal leave time benefits he received. To circumvent this regulation, the officer utilized a PO Box with a forwarding address to have his mail delivered to North Carolina, where he had applied for a job as a correction officer in a county jail. As a result of his fraud, this officer received in excess of \$38,000 in workers' compensation benefits to which he was not entitled. Consequently, the officer was arrested and charged with

Grand Larceny and related charges by the Seneca County District Attorney. He ultimately pled guilty to Official Misconduct, was sentenced to 3 years of probation, and ordered to make full restitution.

Use of Falsified Medical Notes to Obtain Over 13 Months of Benefits (\$30,000+)

In May 2015, while employed at a prison in the Great Meadow Hub, a correction officer filed a claim for a work-related injury and remained out of work for less than a week. Subsequently, from August 2015 through November 2017, the officer repeatedly submitted medical documentation supporting additional workers' compensation leave based upon the May 2015 injury, during which time he received full pay while not working. On one occasion, he remained out on leave for 13 consecutive months. Following an investigation by this office, it was determined that 34 of the medical notes the officer submitted, certifying that he was too incapacitated to work, were in fact forged. Moreover, the majority of medical examinations reflected in the notes never actually took place. No independent or secondary medical examination was ever required or conducted. In total, this correction officer received more than \$30,000 in workers' compensation benefits to which he was not entitled. As a result of his misconduct, he was arrested and charged with Grand Larceny and related charges by the Seneca County District Attorney. The officer ultimately pled guilty to Petit Larceny and his sentence is pending.

Use of Forged Doctors' Notes to Obtain Over 100 Days of Benefits (\$16,000+)

Between March 2018 and September 2019, a correction officer at a facility in the New York City Hub claimed he suffered multiple distinct injuries while on duty and submitted applications for workers' compensation benefits. To support his claims, the officer provided documents purportedly from two doctors on Staten Island, which stated that the officer was unable to work based on medical examinations. However, the investigation found that the examinations were never performed, and both doctors later confirmed to this office that the records provided by the officer were forgeries. No independent or secondary medical examination was ever required or conducted. In total, this correction officer received more than 100 days of paid workers' compensation leave worth over \$16,000 to which he was not entitled. As a result of his misconduct, the officer was arrested and charged with nine counts of Offering a False Instrument for Filing by the Westchester County District Attorney. The officer ultimately pled guilty to Offering a False Instrument for Filing in the Second Degree.

This office continues to pursue investigations and criminal charges against DOCCS correction officers who are abusing workers' compensation benefits. More recently, in November 2022, a correction officer from the Green Haven Hub was arrested and charged with two counts of Offering a False Instrument for Filing and one count of Grand Larceny by the Dutchess County District Attorney for stealing over \$12,000 in workers' compensation benefits by submitting forged medical notes. This office will continue to coordinate with our law enforcement and prosecutorial partner agencies across the State to combat this ongoing fraud.

"Couples Comp"

This office has also investigated fraud allegations relating to what is colloquially referred to by executive staff in numerous DOCCS facilities as "couples comp." This term refers to instances where the facility employs correction officers who are in a romantic relationship and who regularly claim workers' compensation benefits at either the same time, perhaps to travel together, or in alternating sequence, perhaps to facilitate childcare. While there may well be legitimate instances where both parties in a relationship who work together are injured at the same time, the duration and timing of these absences bear the hallmarks of abuse. A few examples of recent investigations into this concerning trend include:⁸

Married Correction Officers Claim Injuries and Collect Workers' Compensation Benefits Simultaneously on 241 Days of a Fifteen-Month Period

Between March 2020 and June 2021, a married couple, working as correction officers in the same facility, were out on workers' compensation leave at the same time for 241 days, or 55.5 percent of the time. More specifically:

- During an eight-month period between March and November 2020, the husband and wife were simultaneously out on workers' compensation leave on 168 of 234 workdays. Remarkably, through the use of a combination of workers' compensation, sick, personal, and vacation leave, the husband was out for 233 of 234 workdays, while the wife was out for 228 of 234 workdays.
- During the three-month period from January through March 2021, the husband was out of work for 80 of 90 workdays, while the wife was out for 73 of those same 90 workdays, with both absences based on workers' compensation claims.
- None of the injury claims made by either of these officers during the above periods involved contact with an incarcerated individual.

⁸ As these investigations are currently ongoing, identifying details are omitted.

Married Correction Officers Claim Injuries and Collect Workers' Compensation Benefits Simultaneously on 151 Days of a Five-Month Period

During a five-month period between March and August 2020, a married couple working as correction officers at the same facility at the same time, both claimed injuries, missed work, and collected workers' compensation benefits simultaneously for 151 days. Additionally:

- From March 2020 through November 2021, the husband was out of work over 41 percent of the time, with 25 percent attributed to workers' compensation leave. The officer's injury claim was not related to contact with an incarcerated individual.
- From March 2020 through February 2022, the wife was out of work over 62 percent of the time, with 50 percent attributed to workers' compensation leave. Of the two injuries purportedly sustained by this officer that contributed to her workers' compensation absences during this period, only one was related to contact with an incarcerated individual and was sustained in July 2021.

These cases are just a fraction of the many that demonstrate the extent to which the current lost wage benefit has become a tool that some correction officers frequently seek to abuse to unlawfully supplement their time off. An investigation into the actions of these four correction officers is underway, but notably, as there is no restriction as to their movements or activities (outside of those that would be foreclosed by their purported injury or disability), proving any fraud remains a significant challenge.

Other Methods

Another commonly alleged scheme involves correction officers who are collecting workers' compensation benefits from an alleged injury sustained on State time while simultaneously working second jobs outside of DOCCS. Such investigations often hinge on the comparison of the alleged injury and extent of the claimed disability to the observed outside work activity. An additional common source of fraud involves correction officers who are injured off-the-job, then report to work at DOCCS with the sustained injury, and subsequently claim to have been injured while on duty. Investigation of each of these types of allegations is extremely resource intensive, time consuming, and difficult to prosecute and prove.

CONSEQUENCES OF FRAUD ON NEW YORK STATE

New York State Department of Corrections and Community Supervision

These increased workers' compensation claims have come at a significant operational and monetary cost to DOCCS and the State. Specifically, DOCCS' security staff workforce has been reduced by over 16 percent since 2015⁹ as a result of numerous factors, including the widely reported and nationwide "great resignation," and a decrease in the size of its recruiting classes. According to DOCCS, the number of workers' compensation claims among its ranks compounds these staffing decreases, has a significant impact on employee morale, and creates an administrative burden in ensuring all New York State prisons are properly staffed.

To make up for the loss of staff hours due to workers' compensation leave, DOCCS has increased its use of mandating overtime shifts for its correction officers, thus forcing correction officers who diligently show up to perform their duties to work longer hours on more days than at any point in the past seven years. Mandated overtime forces those officers, many of whom travel significant distances to work, to sacrifice personal and family time—vital for wellbeing in a stressful profession—and undermines their ability to rely on scheduled days off. Reduced security staff in prisons also directly impedes facilities' capacity to provide all available programs and services to the incarcerated community whom they are duty-bound to serve.

Anecdotally, a current DOCCS correction officer recently shared that he accepted a promotion to work at a correctional facility over three hours away from his home, only to miss the birth of his child due to mandated overtime. This officer advised that he is considering a voluntary demotion. Concerns like his were echoed by correction officers across the State. Furthermore, in a 2022 visit to a correctional facility in the New York City Hub, this office was informed by management that the facility was forced to limit movement and programs for its incarcerated population due to lack of security staffing. This situation, already exacerbated by the COVID-19 pandemic, was routinely cited as a major point of concern by staff and incarcerated individuals in many other facilities this office visited.

Moreover, because the lost wage benefit contractually requires DOCCS to pay full salary during the first six months of any on-the-job injury or illness of a correction officer, as the number of workers' compensation claims increase, so does the cost to DOCCS. Compounding the initial cost of any claim is the requirement to pay overtime rates to the corrections staff mandated to cover the shifts of allegedly injured coworkers.

⁹ DOCCS Facts Sheet May 1, 2023.

New York State Insurance Fund

The cost to the State, however, does not stop at DOCCS. Indeed, while the up-to-six-months of full pay for each alleged injury claim afforded by the current collective bargaining agreement is paid by DOCCS, upon exhaustion of the six months at full pay, any lost wage benefits afforded to the claimant is paid by SIF. SIF's mission is to "guarantee the availability of workers' compensation and disability insurance with the lowest possible cost to New York employers while maintaining a solvent fund."¹⁰ Accordingly, SIF has a vested interest in rooting out fraudulent claims, and has informed this office that DOCCS employees are overrepresented in its own claimant fraud investigations involving State employees. For this reason, as noted above, this office coordinates closely with SIF and DOCCS on addressing correctional facilities with the highest rates of workers' compensation claims.

SIF's Division of Confidential Investigations is tasked with, in part, investigating claimant fraud by State employees. According to SIF, while DOCCS employees only comprise roughly 15 percent of the State workforce, they have been the source of 44 percent of the workers' compensation claimant fraud cases investigated by that division since 2010. As a result of this disparity, SIF has indicated its intention to create a new unit within its claims department to focus solely on DOCCS employee related claimant fraud issues.

POTENTIAL SAFEGUARDS¹¹

As noted at the outset, this review was limited to determining the nature and extent of workers' compensation fraud within the DOCCS system and to identifying potential underlying causes. However, through conversations with DOCCS staff and by examining the lost wages provisions of similarly situated employees in other states and localities, a number of potential safeguards were identified. These include:

- Mandating the surrender of DOCCS identification and State-issued firearms while on workers' compensation leave;
- Dedicating increased resources towards controverting suspicious claims;
- Limiting the availability of the full lost wage benefit to those claims based upon interactions with incarcerated individuals;

¹⁰ <https://ww3.nysif.com/Home/FooterPages/Column1/AboutNYSIF>.

¹¹ These potential safeguards are offered here for consideration as to which, if any, may be appropriately incorporated into any new labor agreement or relevant policies or procedures, without a full analysis as to which would necessarily be collectively bargained, and which could be summarily imposed by the State.

- Examining the feasibility of the following measures during the period when one is receiving the lost wage benefit from DOCCS:
 - Restricting movement, activities, or travel;
 - Creating a collectively bargained list of approved physicians to assess workers' compensation claims, or a heightened level of required medical qualifications; and/or
 - Suspending the accruing of earned service time.

CONCLUSION AND RECOMMENDATION

This office's review has concluded that the current lost wage benefit of six months at full pay for each claim afforded to Security Services Unit members provides a monetary incentive to DOCCS correction officers across the State to abuse the workers' compensation system. As evidenced by the dozens of criminal investigations and resulting charges against DOCCS correction officers over the past seven years, this abuse is statewide, does not appear correlated to any increase in violence or uses of force within prisons, and is ongoing.

Accordingly, the Inspector General recommends that OER review and consider modifying the lost wage benefit afforded to the Security Services Unit for implementation in the anticipated collective bargaining agreement for 2023 forward.