

7493

I N S E N A T E

May 15, 2014

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to layoff and recall rights and disciplinary hearings for certain employees in the non-competitive and labor class

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 80-a of the civil service law, as added by chapter  
2 283 of the laws of 1972, subdivision 2 as amended by chapter 376 of the  
3 laws of 1977, and subdivision 3 as added and subdivisions 4 and 5 as  
4 renumbered by chapter 360 of the laws of 1985, is amended to read as  
5 follows:

6 S 80-a. Suspension or demotion upon the abolition or reduction of  
7 non-competitive class positions [in the state service] AND LABOR CLASS  
8 POSITIONS. 1. Suspension or demotion. Where, because of economy,  
9 consolidation or abolition of functions, curtailment of activities or  
10 otherwise, positions in the non-competitive class [of the state service]  
11 OR LABOR CLASS are abolished or reduced in rank or salary grade, suspen-  
12 sion or demotion, as the case may be, among incumbents having tenure  
13 protection pursuant to [paragraph] PARAGRAPHS (c) AND (F) of subdivision  
14 one of section seventy-five of this [chapter] ARTICLE and holding the  
15 same or similar positions shall be made in the inverse order of original  
16 appointment on a permanent basis in the classified service [of the state  
17 service], subject to the provisions of subdivision seven of section  
18 eighty-five of this chapter; provided, however, that the date of  
19 original appointment of any such incumbent who was transferred to the  
20 state service from another governmental jurisdiction upon the transfer  
21 of functions shall be the date of original appointment on a permanent  
22 basis in the classified service in the service of the governmental  
23 jurisdiction from which such transfer was made. Notwithstanding the  
24 provisions of this subdivision, however, upon the abolition or reduction  
25 of positions in the non-competitive class OR LABOR CLASS, incumbents  
26 holding the same or similar positions who have not completed their  
27 probationary service shall be suspended or demoted, as the case may be,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

1 before any permanent incumbents, and among such probationary employees  
2 the order or suspension or demotion shall be determined as if such  
3 employees were permanent incumbents.

4 2. Continuous service. Except as otherwise provided herein, for the  
5 purposes of this section, [in the state service] the original appoint-  
6 ment of an incumbent shall mean the date of his first appointment on a  
7 permanent basis in the classified service followed by continuous service  
8 in the classified service on a permanent basis up to the time of the  
9 abolition or reduction of the non-competitive class positions OR LABOR  
10 CLASS POSITIONS. An employee who has resigned and who has been rein-  
11 stated or reappointed in the service within one year thereafter shall,  
12 for the purposes of this section, be deemed to have continuous service.  
13 An employee who has been terminated because of a disability resulting  
14 from occupational injury or disease as defined in the [workmen's] WORK-  
15 ERS' compensation law and who has been reinstated or reappointed in the  
16 service thereafter shall be deemed to have continuous service. A period  
17 of employment on a temporary or provisional basis, or in the unclassi-  
18 fied service, immediately preceded and followed by permanent service in  
19 the classified service, shall not constitute an interruption of contin-  
20 uous service for the purposes of this section; nor shall a period of  
21 leave of absence without pay pursuant to law or the rules of the civil  
22 service commission having jurisdiction, or any period during which an  
23 employee is suspended from his position pursuant to this section,  
24 constitute an interruption of continuous service for the purposes of  
25 this section.

26 3. Interrupted service. [A state] AN employee who has resigned and who  
27 has been reinstated or reappointed in the service more than one year  
28 thereafter shall be credited with any previous [state] service rendered  
29 prior to his or her resignation to which he or she would have been enti-  
30 tled for the purposes of this section but for such resignation;  
31 provided, however, that any time out of the service exceeding three  
32 years shall be subtracted from the employee's previous [state] service.  
33 In such instances, continuous service shall be deemed to have begun on  
34 the date which precedes the otherwise applicable date for the commence-  
35 ment of continuous service by the period of actual creditable service  
36 provided by this subdivision.

37 4. Units for suspension or demotion. The president may, by regulation,  
38 designate as separate units for suspension or demotion under the  
39 provisions of this section any state hospital, institution or facility  
40 or any division of any state department or agency or specified hospi-  
41 tals, institutions and facilities of a single state department or agency  
42 within a particular geographic area as determined by the president. Upon  
43 the abolition or reduction of positions in the [state] service, suspen-  
44 sion or demotion, as the case may be, shall be made from among employees  
45 holding the same or similar positions in the department wherein such  
46 abolition or reduction occurs, except that where such abolition or  
47 reduction occurs in a separate unit for suspension or demotion desig-  
48 nated by regulation of the president, suspension or demotion shall be  
49 made from among incumbents holding the same or similar positions in such  
50 separate unit.

51 5. Displacement. A permanent incumbent having tenure protection pursu-  
52 ant to [paragraph] PARAGRAPHS (c) OR (F) of subdivision one of section  
53 seventy-five of this [chapter] ARTICLE who served in a position in  
54 [state] service and who was suspended or displaced from such position  
55 pursuant to this section shall displace the incumbent with the least  
56 retention right pursuant to subdivisions one and two of this section who

1 is serving in a position in the title in which the displacing incumbent  
2 last served on a permanent basis prior to service in one or more posi-  
3 tions in the title from which he is suspended or displaced, if: (1) the  
4 service of the displacing incumbent while in such former title was  
5 satisfactory and (2) the position of the junior incumbent is in (a) the  
6 non-competitive class OR LABOR CLASS, (b) the layoff unit from which the  
7 displacing incumbent was suspended or displaced, and (c) a lower salary  
8 grade than the position from which the displacing incumbent is suspended  
9 or displaced; provided, however, that no incumbent shall displace any  
10 other incumbent having greater retention standing. Refusal of appoint-  
11 ment to a position afforded by this subdivision constitutes waiver of  
12 rights under this subdivision with respect to the suspension or  
13 displacement on account of which the refused appointment was afforded.  
14 The [state civil service] commission shall promulgate rules to implement  
15 this subdivision including rules which may provide adjunctive opportu-  
16 nities for displacement to formerly held positions; provided, however,  
17 that no such rule shall permit an incumbent to displace any other incum-  
18 bent having greater retention standing. For the purpose of acquiring  
19 preferred list rights, displacement pursuant to this subdivision is the  
20 equivalent of suspension or demotion pursuant to subdivision one of this  
21 section.

22 S 2. Subdivision 1 of section 75 of the civil service law, as amended  
23 by chapter 942 of the laws of 1970, the opening paragraph and paragraph  
24 (d) as amended and paragraph (e) as added by chapter 842 of the laws of  
25 1985, paragraph (b) as amended by chapter 350 of the laws of 1989 and  
26 paragraph (c) as amended by chapter 439 of the laws of 1986, is amended  
27 to read as follows:

28 1. Removal and other disciplinary action. A person described in para-  
29 graph (a) [or], paragraph (b), [or] paragraph (c), [or] paragraph (d),  
30 [or] paragraph (e), OR PARAGRAPH (F) of this subdivision shall not be  
31 removed or otherwise subjected to any disciplinary penalty provided in  
32 this section except for incompetency or misconduct shown after a hearing  
33 upon stated charges pursuant to this section.

34 (a) A person holding a position by permanent appointment in the  
35 competitive class of the classified civil service, or

36 (b) a person holding a position by permanent appointment or employment  
37 in the classified service of the state or in the several cities, coun-  
38 ties, towns, or villages thereof, or in any other political or civil  
39 division of the state or of a municipality, or in the public school  
40 service, or in any public or special district, or in the service of any  
41 authority, commission or board, or in any other branch of public  
42 service, who was honorably discharged or released under honorable  
43 circumstances from the armed forces of the United States having served  
44 therein as such member in time of war as defined in section eighty-five  
45 of this chapter, or who is an exempt volunteer firefighter as defined in  
46 the general municipal law, except when a person described in this para-  
47 graph holds the position of private secretary, cashier or deputy of any  
48 official or department, or

49 (c) an employee holding a position in the non-competitive class other  
50 than a position designated in the rules of the state or municipal civil  
51 service commission as confidential or requiring the performance of func-  
52 tions influencing policy, who since his last entry into service has  
53 completed at least [five years] ONE YEAR of continuous service in the  
54 non-competitive class in a position or positions not so designated in  
55 the rules as confidential or requiring the performance of functions  
56 influencing policy, or

1 (d) an employee in the service of the City of New York holding a posi-  
2 tion as Homemaker or Home Aide in the non-competitive class, who since  
3 his last entry into city service has completed at least three years of  
4 continuous service in such position in the non-competitive class, or

5 (e) an employee in the service of a police department within the state  
6 of New York holding the position of detective for a period of three  
7 continuous years or more; provided, however, that a hearing shall not be  
8 required when reduction in rank from said position is based solely on  
9 reasons of the economy, consolidation or abolition of functions,  
10 curtailment of activities or otherwise, OR

11 (F) AN EMPLOYEE HOLDING A POSITION IN THE LABOR CLASS WHO HAS  
12 COMPLETED ONE YEAR OF SERVICE IN A LABOR CLASS POSITION.

13 S 3. This act shall take effect immediately.