

STATE OF NEW YORK

4784

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

Introduced by M. of A. ABBATE -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the civil service law, in relation to hearing procedures for certain public employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 75 of the civil service law, as
2 amended by chapter 226 of the laws of 1994, is amended and a new subdivi-
3 sion 2-a is added to read as follows:

4 2. Procedure; New York city employees. [~~An~~] For any employee in the
5 service of the city of New York described in paragraph (a), (b), (c),
6 (d), or (e) of subdivision one of this section, if such employee [~~who~~]

7 at the time of questioning appears to be a potential subject of disci-
8 plinary action, he or she shall have a right to representation by his or
9 her certified or recognized employee organization under article fourteen
10 of this chapter and shall be notified in advance, in writing, of such
11 right. [~~A state employee who is designated managerial or confidential~~

12 ~~under article fourteen of this chapter, shall, at the time of question-~~
13 ~~ing, where it appears that such employee is a potential subject of~~
14 ~~disciplinary action, have a right to representation and shall be noti-~~
15 ~~fied in advance, in writing, of such right.~~] If representation is

16 requested a reasonable period of time shall be afforded to obtain such
17 representation. If the employee is unable to obtain representation with-
18 in a reasonable period of time the employer has the right to then ques-
19 tion the employee. A hearing officer under this section shall have the
20 power to find that a reasonable period of time was or was not afforded.

21 In the event the hearing officer finds that a reasonable period of time
22 was not afforded then any and all statements obtained from said ques-
23 tioning as well as any evidence or information obtained as a result of
24 said questioning shall be excluded, provided, however, that this subdivi-
25 sion shall not modify or replace any written collective agreement

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

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1 between a public employer and employee organization negotiated pursuant
2 to article fourteen of this chapter. A person against whom removal or
3 other disciplinary action is proposed shall have written notice thereof
4 and of the reasons therefor, shall be furnished a copy of the charges
5 preferred against him or her and shall be allowed at least eight days
6 for answering the same in writing. The hearing upon such charges shall
7 be held by the officer or body having the power to remove the person
8 against whom such charges are preferred, or by a deputy or other person
9 designated by such officer or body in writing for that purpose. In case
10 a deputy or other person is so designated, he or she shall, for the
11 purpose of such hearing, be vested with all the powers of such officer
12 or body and shall make a record of such hearing which shall, with his or
13 her recommendations, be referred to such officer or body for review and
14 decision. The person or persons holding such hearing shall, upon the
15 request of the person against whom charges are preferred, permit him or
16 her to be represented by counsel, or by a representative of a recognized
17 or certified employee organization, and shall allow him or her to summon
18 witnesses in his or her behalf. The burden of proving incompetency or
19 misconduct shall be upon the person alleging the same. Compliance with
20 technical rules of evidence shall not be required.

21 2-a. Procedure; non-New York city employees. For any employee
22 described in paragraph (a), (b), (c), or (e) of subdivision one of this
23 section not in the service of the city of New York, the following proce-
24 dure shall apply: An employee under this subdivision who at the time of
25 questioning appears to be a potential subject of disciplinary action
26 shall have a right to representation by his or her certified or recog-
27 nized employee organization under article fourteen of this chapter and
28 shall be notified in advance, in writing, of such right. A state employ-
29 ee who is designated managerial or confidential under article fourteen
30 of this chapter, shall, at the time of questioning, where it appears
31 that such employee is a potential subject of disciplinary action, have a
32 right to representation and shall be notified in advance, in writing, of
33 such right. If representation is requested a reasonable period of time
34 shall be afforded to obtain such representation. If the employee is
35 unable to obtain representation within a reasonable period of time the
36 employer has the right to then question the employee. A hearing officer
37 under this section shall have the power to find that a reasonable period
38 of time was or was not afforded. In the event the hearing officer finds
39 that a reasonable period of time was not afforded then any and all
40 statements obtained from said questioning as well as any evidence or
41 information obtained as a result of said questioning shall be excluded,
42 provided, however, that this subdivision shall not modify or replace any
43 written collective agreement between a public employer and employee
44 organization negotiated pursuant to article fourteen of this chapter. A
45 person against whom removal or other disciplinary action is proposed
46 shall have written notice thereof and of the reasons thereof, shall be
47 furnished a copy of the charges preferred against him or her and shall
48 be allowed at least eight days for answering the same in writing. The
49 hearing upon such charges shall be held by a hearing officer who shall
50 be a member of the American Arbitration Association, and such hearing
51 officer shall be selected by the mutual agreement of the person against
52 whom disciplinary action is proposed and of the employing officer or
53 body. If such mutual agreement cannot be reached, then the hearing offi-
54 cer shall be selected pursuant to the rules of the American Arbitration
55 Association. Such hearing officer shall, for the purpose of such hear-
56 ing, be vested with all the powers of such officer or body and shall

1 make a record of such hearing which shall, with his or her recommenda-
2 tions and decision, be referred to such officer or body for implementa-
3 tion. The hearing officer holding such hearing shall, upon the request
4 of the person against whom charges are preferred, permit him or her to
5 be represented by counsel, or by a representative of a recognized or
6 certified employee organization, and shall allow him or her to summon
7 witnesses on his or her behalf. The burden of proving incompetency or
8 misconduct shall be upon the person alleging the same. Compliance with
9 technical rules of evidence shall not be required. The hearing officer
10 shall be paid a fee which is equivalent to the normal and customary fee
11 paid to him or her for services as an arbitrator under the auspices of
12 the American Arbitration Association. Provided, however, that the
13 provisions of this subdivision shall not supersede or apply to an exist-
14 ing hearing officer policy and procedure that is the result of a collec-
15 tive bargaining agreement between an employer and a recognized or certi-
16 fied employee organization which was in effect on the effective date of
17 this subdivision.

18 § 2. Subdivision 3 of section 75 of the civil service law, as amended
19 by chapter 710 of the laws of 1984, is amended to read as follows:

20 3. Suspension pending determination of charges; penalties; New York
21 city employees. [Pending] For any employee in the service of the city of
22 New York described in paragraph (a), (b), (c), (d), or (e) of subdi-
23 vision one of this section, pending the hearing and determination of
24 charges of incompetency or misconduct, the officer or employee against
25 whom such charges have been preferred may be suspended without pay for a
26 period not exceeding thirty days. If such officer or employee is found
27 guilty of the charges, the penalty or punishment may consist of a repri-
28 mand, a fine not to exceed one hundred dollars to be deducted from the
29 salary or wages of such officer or employee, suspension without pay for
30 a period not exceeding two months, demotion in grade and title, or
31 dismissal from the service; provided, however, that the time during
32 which an officer or employee is suspended without pay may be considered
33 as part of the penalty. If he or she is acquitted, he or she shall be
34 restored to his or her position with full pay for the period of suspen-
35 sion less the amount of any unemployment insurance benefits he or she
36 may have received during such period. If such officer or employee is
37 found guilty, a copy of the charges, his or her written answer thereto,
38 a transcript of the hearing, and the determination shall be filed in the
39 office of the department or agency in which he or she has been employed,
40 and a copy thereof shall be filed with the civil service commission
41 having jurisdiction over such position. A copy of the transcript of the
42 hearing shall, upon request of the officer or employee affected, be
43 furnished to him or her without charge.

44 § 3. Subdivision 3-a of section 75 of the civil service law, as added
45 by chapter 753 of the laws of 1990, is amended and a new subdivision 3-b
46 is added to read as follows:

47 3-a. Suspension pending determination of charges and penalties relat-
48 ing to police officers of the police department of the city of New York.
49 [Pending] Notwithstanding the provisions of subdivision three of this
50 section, pending the hearing and determination of charges of incompeten-
51 cy or misconduct, a police officer employed by the police department of
52 the city of New York may be suspended without pay for a period not
53 exceeding thirty days. If such officer is found guilty of the charges,
54 the police commissioner of such department may punish the police officer
55 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-
56 trative code of the city of New York.

3-b. Suspension pending determination of charges; penalties; non-New York city employees. For any employee described in paragraph (a), (b), (c), or (e) of subdivision one of this section not in the service of the city of New York, pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended for a period not exceeding thirty days. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance or a precursor of a controlled substance. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he or she is acquitted, he or she shall be restored to his or her position. If such officer or employee is found guilty, a copy of the charges, his or her written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he or she has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him or her without charge.

§ 4. This act shall take effect immediately.