

# STATE OF NEW YORK

2891

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sens. GOUNARDES, GAUGHRAN, SKOUFIS -- 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 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. [~~A~~] 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-

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

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

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

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

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

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

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

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

1 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-  
2 trative code of the city of New York.

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

29 § 4. This act shall take effect immediately.