

STATE OF NEW YORK

9932

IN ASSEMBLY

April 26, 2024

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

AN ACT to amend the civil service law, in relation to hearing officers

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

1 Section 1. Subdivision 1 of section 72 of the civil service law, as
2 amended by chapter 547 of the laws of 1984, is amended to read as
3 follows:
4 1. When in the judgment of an appointing authority an employee is
5 unable to perform the duties of [~~his or her~~] such employee's position by
6 reason of a disability, other than a disability resulting from occupa-
7 tional injury or disease as defined in the workers' compensation law,
8 the appointing authority may require such employee to undergo a medical
9 examination to be conducted by a medical officer selected by the civil
10 service department or municipal commission having jurisdiction. Written
11 notice of the facts providing the basis for the judgment of the appoint-
12 ing authority that the employee is not fit to perform the duties of [~~his~~
13 ~~or her~~] such employee's position shall be provided to the employee and
14 the civil service department or commission having jurisdiction prior to
15 the conduct of the medical examination. If, upon such medical examina-
16 tion, such medical officer shall certify that such employee is not phys-
17 ically or mentally fit to perform the duties of [~~his or her~~] such
18 employee's position, the appointing authority shall notify such employee
19 that [~~he or she~~] they may be placed on leave of absence. An employee
20 placed on leave of absence pursuant to this section shall be given a
21 written statement of the reasons therefor. Such notice shall contain the
22 reason for the proposed leave and the proposed date on which such leave
23 is to commence, shall be made in writing and served in person or by
24 first class, registered or certified mail, return receipt requested,
25 upon the employee. Such notice shall also inform the employee of [~~his or~~
26 ~~her~~] their rights under this procedure. An employee shall be allowed ten
27 working days from service of the notice to object to the imposition of
28 the proposed leave of absence and to request a hearing. The request for
29 such hearing shall be filed by the employee personally or by first

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

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1 class, certified or registered mail, return receipt requested. Upon
2 receipt of such request, the appointing authority shall supply to the
3 employee, ~~[his or her]~~ such employee's personal physician or authorized
4 representative, copies of all diagnoses, test results, observations and
5 other data supporting the certification, and imposition of the proposed
6 leave of absence shall be held in abeyance until a final determination
7 is made by the appointing authority as provided in this section. The
8 appointing authority will afford the employee a hearing within thirty
9 days of the date of a request by the employee to be held by an independ-
10 ent hearing officer agreed to by the appointing authority and the
11 employee except that where the employer is a city of over one million in
12 population such hearing may be held by a hearing officer employed by the
13 office of administrative trials and hearings. If the parties are unable
14 to agree upon a hearing officer, ~~[he or she]~~ such hearing officer shall
15 be selected by lot from a list of persons maintained by the state
16 department of civil service. The hearing officer shall not be an employ-
17 ee of the same appointing authority as the employee alleged to be dis-
18 abled. ~~[He or she]~~ The hearing officer shall be vested with all of the
19 powers of the appointing authority, and shall make a record of the hear-
20 ing which shall, with ~~[his or her recommendation, be referred to the~~
21 ~~appointing authority for review and]~~ such hearing officer's decision
22 ~~[and which shall]~~ be provided to the affected employee free of charge. A
23 copy of the transcript of the hearing shall, upon request of the employ-
24 ee affected, be transmitted to ~~[him]~~ such employee without charge. The
25 employee may be represented at any hearing by counsel or a represen-
26 tative of a certified or recognized employee organization and may pres-
27 ent medical experts and other witnesses or evidence. The employee shall
28 be entitled to a reasonable period of time to obtain such represen-
29 tation. The burden of proving mental or physical unfitness shall be upon
30 the person alleging it. Compliance with technical rules of evidence
31 shall not be required. ~~[The appointing authority will render a final~~
32 ~~determination within ten working days of the date of receipt of the~~
33 ~~hearing officer's report and recommendation. The appointing authority~~
34 ~~may either uphold the original proposed notice of leave of absence,~~
35 ~~withdraw such notice or modify the notice as appropriate.]~~ In any event,
36 a final determination of an employee's contest of a notice of leave
37 shall be rendered within seventy-five days of the receipt of the request
38 for review. An employee on such leave of absence shall be entitled to
39 draw all accumulated, unused sick leave, vacation, overtime and other
40 time allowances standing to ~~[his or her]~~ such employee's credit. The
41 ~~[appointing authority]~~ hearing officer in the final determination shall
42 notify the appointing authority or the employee of ~~[his or her]~~ such
43 employee's right to appeal from such determination to the civil service
44 commission having jurisdiction in accordance with subdivision three of
45 this section.

46 § 2. This act shall take effect immediately.