STATE OF NEW YORK

5890--A

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law and the administrative code of the city of New York, in relation to sick leave for officers and employees with a qualifying World Trade Center condition; to amend the civil service law, in relation to the review of certain claims; and to amend chapter 273 of the laws of 2017 amending the general municipal law relating to granting sick leave for officers and employees with a qualifying World Trade Center condition, in relation to the reimbursement of any public authority or municipal corporation in a city with a population of less than one million people for the cost of certain line of duty sick leave

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

Section 1. Section 92-d of the general municipal law, as added by chapter 273 of the laws of 2017, is amended to read as follows:

§ 92-d. Sick leave for officers and employees with a qualifying World Trade Center condition. **1.(a)** Notwithstanding any other law, rule or regulation to the contrary, officers and employees of the state, a public authority or any municipal corporation outside of a city with a population of one million or more who [~~filed a~~] **have filed and received approval for such filed** notice of participation in World Trade Center rescue, recovery or cleanup operations and subsequently develop a qualifying World Trade Center condition, as defined in section two of the retirement and social security law,[~~while employed by the state, a public authority or such municipal corporation or public authority~~] shall**, after the receipt of a written request for line of duty sick leave,** be granted line of duty sick leave commencing on the date that such employee was diagnosed with a qualifying World Trade Center condi-

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

LBD03751-03-9

tion regardless of whether such officer or employee was employed by his or her current employer at the time that such officer or employee participated in World Trade Center rescue, recovery or cleanup operations. The officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work due to his or her qualifying World Trade Center condition. Such leave shall be provided without loss of an officer or employee's accrued sick leave.

(b) A public employer shall not take any adverse personnel action against a public employee regarding the employee's employment because either (i) the employee utilizes, or requests to utilize, sick leave or any other available leave due to a qualifying World Trade Center condition, as such term is defined in section two of the retirement and social security law, or (ii) the employee utilizes or requests to utilize line of duty sick leave provided by this section.

(c) For purposes of this section, an "adverse personnel action" means any discipline, including issuing a notice of discipline, discharge, suspension, demotion, penalization, or discrimination against an employee utilizing line of duty sick leave pursuant to paragraph (a) of this subdivision.

Nothing in this section shall limit an employer's power pursuant to any other provision of law to discipline an officer or employee by termination, reduction of salary, or any other appropriate measure; to terminate an appointee who has not completed his or her probationary term; and to apply for ordinary or accident disability retirement for an officer or employee.

§ 2. Section 92-d of the general municipal law is amended by adding seven new subdivisions 2, 3, 4, 5, 6, 7 and 8 to read as follows:

2.(a) Notwithstanding any other law, rule or regulation to the contrary, officers and employees of a city with a population of one million or more who (i) do not receive benefits similar to those provided by this section pursuant to a collectively bargained agreement, section 14-122.1 of the administrative code of the city of New York, section 15-108.1 of the administrative code of the city of New York, or other statutory provision and (ii) have filed and received approval for such filed notice of participation in World Trade Center rescue, recovery or cleanup operations and subsequently develop a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, shall, after receipt of a written request for line of duty sick leave, be granted line of duty sick leave commencing on the date that such employee was diagnosed with a qualifying World Trade Center condition regardless of whether such officer or employee was employed by his or her current employer at the time that such officer or employee participated in World Trade Center rescue, recovery or cleanup operations. The officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work due to his or her qualifying World Trade Center condition. Such leave shall be provided without loss of an officer or employee's accrued sick leave.

(b) A public employer shall not take any adverse personnel action against a public employee regarding the employee's employment because either (i) the employee utilizes, or requests to utilize, sick leave or any other available leave due to a qualifying World Trade Center condition, as such term is defined in section two of the retirement and social security law, or (ii) the employee utilizes or requests to utilize line of duty sick leave provided by this section.

(c) For purposes of this section, an "adverse personnel action" means any discipline, including issuing a notice of discipline, discharge, suspension, demotion, penalization, or discrimination against an employee utilizing line of duty sick leave pursuant to subdivision one of this section.

Nothing in this section shall limit an employer's power pursuant to another provision of law to discipline an officer or employee by termination, reduction of salary, or any other appropriate measure; to terminate an appointee who has not completed his or her probationary term; and to apply for ordinary or accident disability retirement for an officer or employee.

3. For purposes of this section, "cost" shall mean the number of days of sick leave that must be restored to an officer or employee pursuant to subdivision one or two of this section multiplied by such officer or employee's wage rate at the time that such sick leave for which reimbursement is being sought was taken.

4. A request, for line of duty sick leave shall be in writing and include a waiver of the protection afforded to the officer or employee pursuant to the health insurance portability and accountability act to allow disclosure of the officer or employee's approved notice of participation and any medical records concerning such officer or employee's notice of participation or qualifying World Trade Center condition in the possession of the retirement system in which such officer or employee is a member for the purpose of reviewing, processing and auditing his or her claim for line of duty sick leave. Such waiver shall be in the form required by the retirement system of which he or she is a member, along with the application for line of duty sick leave, with his or her employer.

5. Notwithstanding any provision of law to the contrary, upon request from the state, public authority or municipal corporation other than a city with a population of one million or more for a copy of an approved notice of participation in World Trade Center rescue, recovery or cleanup operations for an officer or employee, the retirement system in which such officer or employee is a member and to which such officer or employee filed his or her notice of participation in World Trade Center rescue, recovery or cleanup operations in accordance with paragraph (a) of subdivision thirty-six of section two of the retirement and social security law, such retirement system shall provide a verified copy of such approved notice of participation that includes the date that such notice was filed to such requestor. A copy of such verified notice of participation shall be filed with any claim for reimbursement submitted to the civil service commission pursuant to subdivision four of this section. Except as required for filing, review, and audit purposes, such verified notice of participation and all copies of such verified notice shall be confidential and not subject to disclosure pursuant to article six of the public officers law.

6. A public authority or municipal corporation other than a city with a population of one million or more shall submit any claim for reimbursement under this section to the civil service commission. In accordance with subdivision one-a of section six of the civil service law, the civil service commission shall review each claim to determine if such claim shall be approved, reduced, amended or rejected and shall notify the submitting public authority or municipal corporation, within sixty days of receipt of such claim, as to its determination. Such public authority or municipal corporation shall notify the civil service commission within thirty days after receipt of the civil service commis-

sion's notification, as to its acceptance or rejection of such determination. Failure to so notify the civil service commission shall constitute an acceptance of the determination. If accepted by such public authority or municipal corporation, such acceptance shall constitute the final and conclusive determination for such claim. If rejected by such public authority or municipal corporation, such public authority or municipal corporation shall resubmit its claim, within thirty days after receipt of the civil service commission's notification, together with its reasons for objection and any additional documentation which may justify its claim. Upon receipt of a resubmitted claim, the civil service commission shall review such claim and within sixty days of receipt of such resubmitted claim, make a final determination as to the amount to be approved for such claim. If such public authority or municipal corporation shall dispute such final determination it may commence an action, within sixty days of such final determination, in the court of claims which shall have jurisdiction to adjudicate the claim and enter judgment, which judgment shall be a final determination for purposes of this section and shall be payable in accordance with the provisions of this section.

7. The civil service commission shall certify all claims for which a final determination has been made. The civil service commission shall submit all certified claims to the comptroller of the department of audit and control on or before the first day of the immediately succeeding month during which such claim was certified.

8. All claims certified by the civil service commission shall be paid monthly and shall be paid upon a warrant from the comptroller.

§ 3. Section 6 of the civil service law is amended by adding a new subdivision 1-a to read as follows:

1-a. Have the power to review claims for reimbursement submitted by public authorities or municipal corporations other than a city with a population of a million or more pursuant to section ninety-two-d of the general municipal law to determine if such claim shall be approved, reduced, amended or rejected. Such review and determination shall be made in accordance with section ninety-two-d of the general municipal law.

§ 4. Section 2 of chapter 273 of the laws of 2017, amending the general municipal law relating to granting sick leave for officers and employees with a qualifying World Trade Center condition, is amended to read as follows:

§ 2. The state shall reimburse any public authority or municipal corporation [~~of less than one million~~] other than a city with a population of one million or more people for the cost of any line duty sick leave granted pursuant to this act. Such reimbursement shall be made in accordance with the provisions of section 92-d of the general municipal law.

§ 5. The administrative code of the city of New York is amended by adding a new section 12-140 to read as follows:

§ 12-140 Line of duty sick leave for World Trade Center rescue, recovery or cleanup operations. (a) Notwithstanding any other law, rule or regulation to the contrary, officers and employees of a city with a population of one million or more who (i) do not receive benefits similar to those provided by this section pursuant to a collectively bargained agreement, section 14-122.1 of this code, section 15-108.1 of this code, or other statutory provision and (ii) filed and received approval for such filed notice of participation in World Trade Center rescue, recovery or cleanup operations and subsequently develop a quali-

fying World Trade Center condition, as defined in section two of the retirement and social security law, shall, after receipt of a written request for line of duty sick leave, be granted line of duty sick leave commencing on the date that such employee was diagnosed with a qualifying World Trade Center condition regardless of whether such officer or employee was employed by his or her current employer at the time that such officer or employee participated in World Trade Center rescue, recovery or cleanup operations. The officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work. Such leave shall be provided without loss of an officer or employee's accrued sick leave.

(b) A public employer shall not take any adverse personnel action against a public employee regarding the employee's employment because either (i) the employee utilizes, or requests to utilize, sick leave or any other available leave due to a qualifying World Trade Center condition, as such term is defined in section two of the retirement and social security law, or (ii) the employee utilizes or requests to utilize line of duty sick leave provided by this section.

(c) For purposes of this section, an "adverse personnel action" means any discipline, including issuing a notice of discipline, discharge, suspension, demotion, penalization, or discrimination against an employee utilizing line of duty sick leave pursuant to subdivision (a) of this section. Nothing in this section shall limit an employer's power pursuant to another provision of law to discipline an officer or employee by termination, reduction of salary, or any other appropriate measure; to terminate an appointee who has not completed his or her probationary term; and to apply for ordinary or accident disability retirement for an officer or employee.

§ 6. The commissioner of the department of civil service, in consultation with the state comptroller and the commissioner of the department of taxation and finance, shall promulgate rules and regulations to assist with the implementation of section 92-d of the general municipal law. Such rules and regulations shall be issued no later than 90 days after this act shall have become a law. Notwithstanding any other provisions to the contrary in the state administrative procedure act, such rules and regulations may be adopted on an emergency basis if necessary to meet such 90-day deadline.

§ 7. The commissioner of the department of taxation and finance, in consultation with the state comptroller, shall issue guidance regarding the tax treatment to officers and employees who have received restored sick leave no later than sixty days after this act shall have become a law.

§ 8. This act shall take effect immediately; provided that section one of this act shall be deemed to have been in full force and effect on the same date as chapter 273 of the laws of 2017; and provided further that this act shall apply to all claims for reimbursement filed pursuant to section 92-d of the general municipal law, as amended by this act; and provided further, that any officer or employee who is currently employed by a city with a population of one million or more who has been diagnosed with a qualifying World Trade Center condition and is using sick leave due to such condition shall receive a restoration of such sick leave retroactive to the date such officer or employee was diagnosed with a qualifying World Trade Center condition.