

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:

1 Section 1. Section 92-d of the general municipal law, as added by
2 chapter 273 of the laws of 2017, is amended to read as follows:
3 § 92-d. Sick leave for officers and employees with a qualifying World
4 Trade Center condition. 1.(a) Notwithstanding any other law, rule or
5 regulation to the contrary, officers and employees of the state, a
6 public authority or any municipal corporation outside of a city with a
7 population of one million or more who [~~filed-a~~] have filed and received
8 approval for such filed notice of participation in World Trade Center
9 rescue, recovery or cleanup operations and subsequently develop a quali-
10 fying World Trade Center condition, as defined in section two of the
11 retirement and social security law, [~~while employed by the state, a~~
12 ~~public authority or such municipal corporation or public authority~~]
13 shall, after the receipt of a written request for line of duty sick
14 leave, be granted line of duty sick leave commencing on the date that
15 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.

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

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

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

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

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

29 2.(a) Notwithstanding any other law, rule or regulation to the contra-
30 ry, officers and employees of a city with a population of one million or
31 more who (i) do not receive benefits similar to those provided by this
32 section pursuant to a collectively bargained agreement, section 14-122.1
33 of the administrative code of the city of New York, section 15-108.1 of
34 the administrative code of the city of New York, or other statutory
35 provision and (ii) have filed and received approval for such filed
36 notice of participation in World Trade Center rescue, recovery or clean-
37 up operations and subsequently develop a qualifying World Trade Center
38 condition, as defined in section two of the retirement and social secu-
39 rity law, shall, after receipt of a written request for line of duty
40 sick leave, be granted line of duty sick leave commencing on the date
41 that such employee was diagnosed with a qualifying World Trade Center
42 condition regardless of whether such officer or employee was employed by
43 his or her current employer at the time that such officer or employee
44 participated in World Trade Center rescue, recovery or cleanup oper-
45 ations. The officer or employee shall be compensated at his or her regu-
46 lar rate of pay for those regular work hours during which the officer or
47 employee is absent from work due to his or her qualifying World Trade
48 Center condition. Such leave shall be provided without loss of an offi-
49 cer or employee's accrued sick leave.

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

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

6 Nothing in this section shall limit an employer's power pursuant to
7 another provision of law to discipline an officer or employee by termi-
8 nation, reduction of salary, or any other appropriate measure; to termi-
9 nate an appointee who has not completed his or her probationary term;
10 and to apply for ordinary or accident disability retirement for an offi-
11 cer or employee.

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

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

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

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

1 sion's notification, as to its acceptance or rejection of such determi-
2 nation. Failure to so notify the civil service commission shall consti-
3 tute an acceptance of the determination. If accepted by such public
4 authority or municipal corporation, such acceptance shall constitute the
5 final and conclusive determination for such claim. If rejected by such
6 public authority or municipal corporation, such public authority or
7 municipal corporation shall resubmit its claim, within thirty days after
8 receipt of the civil service commission's notification, together with
9 its reasons for objection and any additional documentation which may
10 justify its claim. Upon receipt of a resubmitted claim, the civil
11 service commission shall review such claim and within sixty days of
12 receipt of such resubmitted claim, make a final determination as to the
13 amount to be approved for such claim. If such public authority or munic-
14 ipal corporation shall dispute such final determination it may commence
15 an action, within sixty days of such final determination, in the court
16 of claims which shall have jurisdiction to adjudicate the claim and
17 enter judgment, which judgment shall be a final determination for
18 purposes of this section and shall be payable in accordance with the
19 provisions of this section.

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

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

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

29 1-a. Have the power to review claims for reimbursement submitted by
30 public authorities or municipal corporations other than a city with a
31 population of a million or more pursuant to section ninety-two-d of the
32 general municipal law to determine if such claim shall be approved,
33 reduced, amended or rejected. Such review and determination shall be
34 made in accordance with section ninety-two-d of the general municipal
35 law.

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

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

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

48 § 12-140 Line of duty sick leave for World Trade Center rescue, recov-
49 ery or cleanup operations. (a) Notwithstanding any other law, rule or
50 regulation to the contrary, officers and employees of a city with a
51 population of one million or more who (i) do not receive benefits simi-
52 lar to those provided by this section pursuant to a collectively
53 bargained agreement, section 14-122.1 of this code, section 15-108.1 of
54 this code, or other statutory provision and (ii) filed and received
55 approval for such filed notice of participation in World Trade Center
56 rescue, recovery or cleanup operations and subsequently develop a quali-

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

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

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

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

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

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