

# STATE OF NEW YORK

8970

## IN ASSEMBLY

January 6, 2020

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

AN ACT to amend the civil service, the general municipal law and the administrative code of the city of New York, in relation to the review of certain claims; to amend a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition, as proposed in legislative bills numbers S.5890-A and A.7819-A, in relation to sick leave for certain individuals with a qualifying World Trade Center condition and rights of public employers and employees relating thereto; and to repeal certain provisions of the civil service law relating thereto

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

Section 1. Subdivision 1-a of section 6 of the civil service law, as added by a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition as proposed in legislative bills numbers S.5890-A and A.7819-A, is REPEALED.

§ 2. Section 7 of the civil service law is amended by adding a new subdivision 8 to read as follows:

8. The president shall 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.

§ 3. Section 92-d of the general municipal law, as amended by section 1 and subdivisions 2, 3, 4, 5, 6, 7, and 8 as added by section 2 of a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition, as proposed in legislative bills numbers S.5890-A and A.7819-A, is amended to read as follows:

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

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§ 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 have filed and received approval for such filed notice of participation in World Trade Center rescue, recovery or cleanup operations or was a participant in World Trade Center rescue, recovery, or cleanup operations as such term is defined in section one hundred sixty-one of the workers' compensation law, who does not have such filed and approved notice of participation and has filed a notice of participation under section one hundred sixty-two of the workers' compensation law and is now employed by the state, a public authority, or any municipal corporation, and subsequently [~~develop~~ developed] a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, 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 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 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~~] be deemed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any sick leave or other available leave due to a qualifying World Trade Center condition or request to use, or utilization of, any line of duty sick leave provided by this section.

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

1 provision and (ii) have filed and received approval for such filed  
2 notice of participation in World Trade Center rescue, recovery or clean-  
3 up operations or was a participant in World Trade Center rescue, recovery,  
4 or cleanup operations as such term is defined in section one  
5 hundred sixty-one of the workers' compensation law, who does not have  
6 such filed and approved notice of participation and has filed a notice  
7 of participation under section one hundred sixty-two of the workers'  
8 compensation law and is now employed by the state, a public authority,  
9 or any municipal corporation, and subsequently [~~develop~~] developed a  
10 qualifying World Trade Center condition, as defined in section two of  
11 the retirement and social security law, shall, after receipt of a writ-  
12 ten request for line of duty sick leave, be granted line of duty sick  
13 leave commencing on the date that such employee was diagnosed with a  
14 qualifying World Trade Center condition regardless of whether such offi-  
15 cer or employee was employed by his or her current employer at the time  
16 that such officer or employee participated in World Trade Center rescue,  
17 recovery or cleanup operations. The officer or employee shall be compen-  
18 sated at his or her regular rate of pay for those regular work hours  
19 during which the officer or employee is absent from work due to his or  
20 her qualifying World Trade Center condition. Such leave shall be  
21 provided without loss of an officer or employee's accrued sick leave.

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

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

34 Nothing in this section shall [~~limit an employer's power pursuant to~~  
35 ~~another provision of law to discipline an officer or employee by termi-~~  
36 ~~nation, reduction of salary, or any other appropriate measure, to termi-~~  
37 ~~nate an appointee who has not completed his or her probationary term,~~  
38 ~~and to apply for ordinary or accident disability retirement for an offi-~~  
39 ~~cer or employee] be deemed to diminish or impair the rights of a public  
40 employee or employer under any law, rule, regulation or collectively  
41 negotiated agreement or to prohibit any personnel action which otherwise  
42 would have been taken regardless of any request to use, or utilization  
43 of, any sick leave or other available leave due to a qualifying World  
44 Trade Center condition or request to use, or utilization of, any line of  
45 duty sick leave provided by this section.~~

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

51 4. A request, for line of duty sick leave shall be in writing and  
52 include a waiver of the protection afforded to the officer or employee  
53 pursuant to the health insurance portability and accountability act to  
54 allow disclosure of the officer or employee's approved notice of partic-  
55 ipation and any medical records concerning such officer or employee's  
56 notice of participation or qualifying World Trade Center condition in

1 the possession of the retirement system or workers' compensation board  
2 in which such officer or employee is a member for the purpose of review-  
3 ing, processing and auditing his or her claim for line of duty sick  
4 leave. Such waiver shall be in the form required by the retirement  
5 system of which he or she is a member or the workers' compensation  
6 board, along with the application for line of duty sick leave, with his  
7 or her employer.

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

26 6. A public authority or municipal corporation other than a city with  
27 a population of one million or more shall submit any claim for  
28 reimbursement under this section to the civil service [~~commission~~]  
29 department. In accordance with subdivision [~~one-a~~] eight of section  
30 [~~six~~] seven of the civil service law, the civil service [~~commission~~]  
31 department shall review each claim to determine if such claim shall be  
32 approved, reduced, amended or rejected and shall notify the submitting  
33 public authority or municipal corporation, within sixty days of receipt  
34 of such claim, as to its determination. Such public authority or munici-  
35 pal corporation shall notify the civil service [~~commission~~] department  
36 within thirty days after receipt of the civil service [~~commission's~~]  
37 department's notification, as to its acceptance or rejection of such  
38 determination. Failure to so notify the civil service [~~commission~~]  
39 department shall constitute an acceptance of the determination. If  
40 accepted by such public authority or municipal corporation, such accept-  
41 ance shall constitute the final and conclusive determination for such  
42 claim. Notwithstanding any other law to the contrary, there shall be no  
43 appeal of such determination to the civil service commission. If  
44 rejected by such public authority or municipal corporation, such public  
45 authority or municipal corporation [~~shall resubmit its claim, within~~  
46 ~~thirty days after receipt of the civil service commission's notifica-~~  
47 ~~tion, together with its reasons for objection and any additional~~  
48 ~~documentation which may justify its claim. Upon receipt of a resubmitted~~  
49 ~~claim, the civil service commission shall review such claim and within~~  
50 ~~sixty days of receipt of such resubmitted claim, make a final determi-~~  
51 ~~nation as to the amount to be approved for such claim. If such public~~  
52 ~~authority or municipal corporation shall dispute such final determi-~~  
53 ~~nation it~~] may commence an action[, within sixty days of such final  
54 determination, in the court of claims which shall have jurisdiction to  
55 adjudicate the claim and enter judgment, which judgment shall be a final  
56 determination for purposes of this section and shall be payable in

~~accordance with the provisions of this section~~ in accordance with the provisions of article seventy-eight of the civil practice law and rules.

7. The civil service [~~commission~~] department shall certify all claims for which a final determination has been made. The civil service [~~commission~~] department shall submit all certified claims [~~to the comptroller of the department of audit and control~~] for payment 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~~] department shall be paid monthly [~~and shall be paid upon a warrant from the comptroller~~].

§ 4. Section 12-140 of the administrative code of the city of New York, as added by a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition, as proposed in legislative bills numbers S.5890-A and A.7819-A, is amended 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 or was a participant in World Trade Center rescue, recovery, or cleanup operations as such term is defined in section one hundred sixty-one of the workers' compensation law, who does not have such filed and approved notice of participation and has filed a notice of participation under section one hundred sixty-two of the workers' compensation law and is now employed by a city with a population of one million or more, and subsequently [~~develop~~] developed 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. 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]~~ be deemed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any sick leave or other available leave due to a qualifying World Trade Center condition or request to use, or utilization of, any line of duty sick leave provided by this section.

§ 5. Section 6 of a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition, as proposed in legislative bills numbers S.5890-A and A.7819-A, is amended to read as follows:

§ 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]~~ may 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]~~.

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the general municipal law and other laws relating to sick leave for officers and employees with a qualifying World Trade Center condition, as proposed in legislative bills numbers S.5890-A and A.7819-A, takes effect.