

# STATE OF NEW YORK

5205--B

2019-2020 Regular Sessions

## IN SENATE

April 16, 2019

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Civil Service and Pensions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivision 2 of section 75 of the civil service law, as amended by chapter 226 of the laws of 1994, is amended and a new subdivision 2-a is added to read as follows:

2. Procedure; New York city employees. [~~An~~] For any employee in the service of the city of New York described in paragraph (a), (b), (c), (d), or (e) of subdivision one of this section, if such employee [~~who~~] at the time of questioning appears to be a potential subject of disciplinary action, he or she shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. [~~A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right.~~] If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then ques-

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

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tion the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him or her and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he or she shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his or her recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him or her to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him or her to summon witnesses in his or her behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

2-a. Procedure; non-New York city employees. For any employee described in paragraph (a), (b), (c), or (e) of subdivision one of this section not in the service of the city of New York, the following procedure shall apply: An employee under this subdivision who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons thereof, shall be furnished a copy of the charges preferred against him or her and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by a hearing officer who shall

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

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

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

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

54 3-a. Suspension pending determination of charges and penalties relat-  
55 ing to police officers of the police department of the city of New York.  
56 [~~Pending~~] Notwithstanding the provisions of subdivision three of this

1 section, pending the hearing and determination of charges of incompeten-  
2 cy or misconduct, a police officer employed by the police department of  
3 the city of New York may be suspended without pay for a period not  
4 exceeding thirty days. If such officer is found guilty of the charges,  
5 the police commissioner of such department may punish the police officer  
6 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-  
7 trative code of the city of New York.

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

34 § 4. This act shall take effect immediately.