

STATE OF NEW YORK

2891--A

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sens. GOUNARDES, GAUGHRAN, KENNEDY, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions -- 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:

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

4 2. Procedure; New York city employees. [~~A~~] For any employee in the
5 service of the city of New York described in paragraph (a), (b), (c),
6 (d), or (e) of subdivision one of this section, if such employee [~~who~~]
7 at the time of questioning appears to be a potential subject of disci-
8 plinary action, he or she shall have a right to representation by his or
9 her certified or recognized employee organization under article fourteen
10 of this chapter and shall be notified in advance, in writing, of such
11 right. [~~A state employee who is designated managerial or confidential~~
12 ~~under article fourteen of this chapter, shall, at the time of question-~~
13 ~~ing, where it appears that such employee is a potential subject of~~
14 ~~disciplinary action, have a right to representation and shall be noti-~~
15 ~~fied in advance, in writing, of such right.~~] If representation is
16 requested a reasonable period of time shall be afforded to obtain such
17 representation. If the employee is unable to obtain representation with-
18 in a reasonable period of time the employer has the right to then ques-
19 tion the employee. A hearing officer under this section shall have the
20 power to find that a reasonable period of time was or was not afforded.
21 In the event the hearing officer finds that a reasonable period of time
22 was not afforded then any and all statements obtained from said ques-
23 tioning as well as any evidence or information obtained as a result of

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

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1 said questioning shall be excluded, provided, however, that this subdi-
2 vision shall not modify or replace any written collective agreement
3 between a public employer and employee organization negotiated pursuant
4 to article fourteen of this chapter. A person against whom removal or
5 other disciplinary action is proposed shall have written notice thereof
6 and of the reasons therefor, shall be furnished a copy of the charges
7 preferred against him or her and shall be allowed at least eight days
8 for answering the same in writing. The hearing upon such charges shall
9 be held by the officer or body having the power to remove the person
10 against whom such charges are preferred, or by a deputy or other person
11 designated by such officer or body in writing for that purpose. In case
12 a deputy or other person is so designated, he or she shall, for the
13 purpose of such hearing, be vested with all the powers of such officer
14 or body and shall make a record of such hearing which shall, with his or
15 her recommendations, be referred to such officer or body for review and
16 decision. The person or persons holding such hearing shall, upon the
17 request of the person against whom charges are preferred, permit him or
18 her to be represented by counsel, or by a representative of a recognized
19 or certified employee organization, and shall allow him or her to summon
20 witnesses in his or her behalf. The burden of proving incompetency or
21 misconduct shall be upon the person alleging the same. Compliance with
22 technical rules of evidence shall not be required.

23 2-a. Procedure; non-New York city employees. For any employee
24 described in paragraph (a), (b), (c), or (e) of subdivision one of this
25 section not in the service of the city of New York, the following proce-
26 cedure shall apply: An employee under this subdivision who at the time of
27 questioning appears to be a potential subject of disciplinary action
28 shall have a right to representation by his or her certified or recog-
29 nized employee organization under article fourteen of this chapter and
30 shall be notified in advance, in writing, of such right. A state employ-
31 ee who is designated managerial or confidential under article fourteen
32 of this chapter, shall, at the time of questioning, where it appears
33 that such employee is a potential subject of disciplinary action, have a
34 right to representation and shall be notified in advance, in writing, of
35 such right. If representation is requested a reasonable period of time
36 shall be afforded to obtain such representation. If the employee is
37 unable to obtain representation within a reasonable period of time the
38 employer has the right to then question the employee. A hearing officer
39 under this section shall have the power to find that a reasonable period
40 of time was or was not afforded. In the event the hearing officer finds
41 that a reasonable period of time was not afforded then any and all
42 statements obtained from said questioning as well as any evidence or
43 information obtained as a result of said questioning shall be excluded,
44 provided, however, that this subdivision shall not modify or replace any
45 written collective agreement between a public employer and employee
46 organization negotiated pursuant to article fourteen of this chapter. A
47 person against whom removal or other disciplinary action is proposed
48 shall have written notice thereof and of the reasons thereof, shall be
49 furnished a copy of the charges preferred against him or her and shall
50 be allowed at least eight days for answering the same in writing. The
51 hearing upon such charges shall be held by a hearing officer who shall
52 be a member of the American Arbitration Association, and such hearing
53 officer shall be selected by the mutual agreement of the person against
54 whom disciplinary action is proposed and of the employing officer or
55 body. If such mutual agreement cannot be reached, then the hearing offi-
56 cer shall be selected pursuant to the rules of the American Arbitration

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

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

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

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

50 3-a. Suspension pending determination of charges and penalties relat-
51 ing to police officers of the police department of the city of New York.
52 [~~Pending~~] Notwithstanding the provisions of subdivision three of this
53 section, pending the hearing and determination of charges of incompeten-
54 cy or misconduct, a police officer employed by the police department of
55 the city of New York may be suspended without pay for a period not
56 exceeding thirty days. If such officer is found guilty of the charges,

1 the police commissioner of such department may punish the police officer
2 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-
3 trative code of the city of New York.

4 3-b. Suspension pending determination of charges; penalties; non-New
5 York city employees. For any employee described in paragraph (a), (b),
6 (c), or (e) of subdivision one of this section not in the service of
7 the city of New York, pending the hearing and determination of charges
8 of incompetency or misconduct, the officer or employee against whom such
9 charges have been preferred may be suspended for a period not exceeding
10 thirty days. The suspension shall be with pay, except the employee may
11 be suspended without pay if the employee has entered a guilty plea to or
12 has been convicted of a felony crime concerning the criminal sale or
13 possession of a controlled substance or a precursor of a controlled
14 substance. If such officer or employee is found guilty of the charges,
15 the penalty or punishment may consist of a reprimand, a fine not to
16 exceed one hundred dollars to be deducted from the salary or wages of
17 such officer or employee, suspension without pay for a period not
18 exceeding two months, demotion in grade and title, or dismissal from the
19 service; provided, however, that the time during which an officer or
20 employee is suspended without pay may be considered as part of the
21 penalty. If he or she is acquitted, he or she shall be restored to his
22 or her position. If such officer or employee is found guilty, a copy of
23 the charges, his or her written answer thereto, a transcript of the
24 hearing, and the determination shall be filed in the office of the
25 department or agency in which he or she has been employed, and a copy
26 thereof shall be filed with the civil service commission having juris-
27 isdiction over such position. A copy of the transcript of the hearing
28 shall, upon request of the officer or employee affected, be furnished to
29 him or her without charge.

30 § 4. This act shall take effect immediately.