

# 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.