

STATE OF NEW YORK

6162

2021-2022 Regular Sessions

IN ASSEMBLY

March 10, 2021

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

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 to read as
3 follows:
4 2. Procedure. An employee who at the time of questioning appears to be
5 a potential subject of disciplinary action shall have a right to repre-
6 sentation by his or her certified or recognized employee organization
7 under article fourteen of this chapter and shall be notified in advance,
8 in writing, of such right. A state employee who is designated managerial
9 or confidential under article fourteen of this chapter, shall, at the
10 time of questioning, where it appears that such employee is a potential
11 subject of disciplinary action, have a right to representation and shall
12 be notified in advance, in writing, of such right. If representation is
13 requested a reasonable period of time shall be afforded to obtain such
14 representation. If the employee is unable to obtain representation with-
15 in a reasonable period of time the employer has the right to then ques-
16 tion the employee. A hearing officer under this section shall have the
17 power to find that a reasonable period of time was or was not afforded.
18 In the event the hearing officer finds that a reasonable period of time
19 was not afforded then any and all statements obtained from said ques-
20 tioning as well as any evidence or information obtained as a result of
21 said questioning shall be excluded, provided, however, that this subdi-
22 vision shall not modify or replace any written collective agreement
23 between a public employer and employee organization negotiated pursuant
24 to article fourteen of this chapter. A person against whom removal or
25 other disciplinary action is proposed shall have written notice thereof

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

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1 and of the reasons therefor, shall be furnished a copy of the charges
2 preferred against him and shall be allowed at least eight days for
3 answering the same in writing. The hearing upon such charges shall be
4 held by the officer or body having the power to remove the person
5 against whom such charges are preferred, or by a deputy or other person
6 designated by such officer or body in writing for that purpose. In case
7 a deputy or other person is so designated, he shall, for the purpose of
8 such hearing, be vested with all the powers of such officer or body and
9 shall make a record of such hearing which shall, with his recommenda-
10 tions, be referred to such officer or body for review and decision.
11 Notwithstanding any other provisions of law to the contrary, the recom-
12 mendation of the hearing officer in relation to any state employee who
13 is designated managerial or confidential under article fourteen of this
14 chapter shall be considered final and not subject to change or modifica-
15 tion. The person or persons holding such hearing shall, upon the request
16 of the person against whom charges are preferred, permit him to be
17 represented by counsel, or by a representative of a recognized or certi-
18 fied employee organization, and shall allow him to summon witnesses in
19 his behalf. The burden of proving incompetency or misconduct shall be
20 upon the person alleging the same. Compliance with technical rules of
21 evidence shall not be required.

22 § 2. This act shall take effect immediately.