

# STATE OF NEW YORK

3748--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 7, 2023

Introduced by M. of A. PHEFFER AMATO, BRONSON, GUNTHER -- read once and referred to the Committee on Governmental Employees -- 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 and paragraph (a) of subdivision 2-a of  
2 section 75 of the civil service law, subdivision 2 as amended by chapter  
3 226 of the laws of 1994 and paragraph (a) of subdivision 2-a as added by  
4 chapter 674 of the laws of 2022, are amended and a new subdivision 2-b  
5 is added to read as follows:

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

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

LBD03619-02-3

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

25 (a) Notwithstanding any other provision of law to the contrary,  
26 including but not limited to subdivision four of section seventy-six of  
27 this title, any paid officer or member of an organized fire company or  
28 fire department of a city of less than one million population, or town,  
29 village or fire district who is represented by a certified or recognized  
30 employee organization pursuant to article fourteen of this chapter shall  
31 not be subjected to the penalty of dismissal from service or any other  
32 discipline if the hearing, upon such charge, has been conducted by some-  
33 one other than an independent hearing officer to be agreed to by the  
34 employer and the person against whom disciplinary action is proposed. If  
35 the parties are unable to agree upon a hearing officer, the hearing  
36 officer shall be selected from a list of seven names to be provided by  
37 the public employment relations board. The public employment relations  
38 board shall maintain a list of independent hearing officers for this  
39 purpose and for the purpose described in subdivision two-b of this  
40 section. The parties shall select the hearing officer by alternately  
41 striking names from the list of seven. The hearing officer shall be  
42 vested with all powers of the appointing authority, shall conduct and  
43 make a record of the hearing, and shall render a final decision. The  
44 cost incurred in obtaining such independent hearing officer shall be  
45 divided equally between the parties; provided that as may be determined  
46 upon the circumstances of the case, the hearing officer shall be author-  
47 ized to allocate such cost on the basis of the frivolous nature of any  
48 claim made or any defense interposed. In order to find a claim or  
49 defense to be frivolous, the hearing officer must find at least one of  
50 the following:

51 (i) the claim or defense was commenced, used or continued in bad  
52 faith, solely to delay or prolong the resolution of the action or to  
53 harass or maliciously injure another; or

54 (ii) the claim or defense was commenced or continued in bad faith  
55 without any reasonable basis in law or fact. If the claim or defense was  
56 promptly discontinued when the party learned or should have learned that

1 the claim or defense lacked such reasonable basis, the hearing officer  
2 may find that the party did not act in bad faith. A person served with  
3 charges may then, however, elect in writing to proceed with a hearing  
4 pursuant to the procedures established in subdivision two of this  
5 section in lieu of the procedures set forth in this subdivision.

6 2-b. Procedure; non-New York city employees. For any employee  
7 described in paragraph (a), (b), (c), or (e) of subdivision one of this  
8 section not in the service of the city of New York, the following proce-  
9 cedure shall apply: An employee under this subdivision who at the time of  
10 questioning appears to be a potential subject of disciplinary action  
11 shall have a right to representation by his or her certified or recog-  
12 nized employee organization under article fourteen of this chapter and  
13 shall be notified in advance, in writing, of such right. A state employ-  
14 ee who is designated managerial or confidential under article fourteen  
15 of this chapter, shall, at the time of questioning, where it appears  
16 that such employee is a potential subject of disciplinary action, have a  
17 right to representation and shall be notified in advance, in writing, of  
18 such right. If representation is requested a reasonable period of time  
19 shall be afforded to obtain such representation. If the employee is  
20 unable to obtain representation within a reasonable period of time the  
21 employer has the right to then question the employee. A hearing officer  
22 under this section shall have the power to find that a reasonable period  
23 of time was or was not afforded. In the event the hearing officer finds  
24 that a reasonable period of time was not afforded then any and all  
25 statements obtained from said questioning as well as any evidence or  
26 information obtained as a result of said questioning shall be excluded,  
27 provided, however, that this subdivision shall not modify or replace any  
28 written collective agreement between a public employer and employee  
29 organization negotiated pursuant to article fourteen of this chapter. A  
30 person against whom removal or other disciplinary action is proposed  
31 shall have written notice thereof and of the reasons thereof, shall be  
32 furnished a copy of the charges preferred against him or her and shall  
33 be allowed at least eight days for answering the same in writing. The  
34 hearing upon such charges shall be held by a hearing officer who shall  
35 be selected by the mutual agreement of the person against whom discipli-  
36 nary action is proposed and of the employing officer or body. If such  
37 mutual agreement cannot be reached, then the hearing officer shall be  
38 selected from a list of seven names to be provided by the public employ-  
39 ment relations board pursuant to subdivision two-a of this section. The  
40 parties shall select the hearing officer by alternately striking names  
41 from the list of seven. Such hearing officer shall, for the purpose of  
42 such hearing, be vested with all the powers of such officer or body and  
43 shall make a record of such hearing which shall, with his or her recom-  
44 mendations and decision, be referred to such officer or body for imple-  
45 mentation. The hearing officer holding such hearing shall, upon the  
46 request of the person against whom charges are preferred, permit him or  
47 her to be represented by counsel, or by a representative of a recognized  
48 or certified employee organization, and shall allow him or her to summon  
49 witnesses on his or her behalf. The burden of proving incompetency or  
50 misconduct shall be upon the person alleging the same. Compliance with  
51 technical rules of evidence shall not be required. The cost incurred in  
52 obtaining the independent hearing officer shall be divided equally  
53 between the parties; provided that as may be determined upon the circum-  
54 stances of the case, the hearing officer shall be authorized to allocate  
55 such cost on the basis of the frivolous nature of any claim made or any  
56 defense interposed in the manner provided for in paragraph (a) of subdi-

1 vision two-a of this section. Provided, however, that the provisions of  
2 this subdivision shall not supersede or apply to an existing hearing  
3 officer policy and procedure that is the result of a collective bargain-  
4 ing agreement between an employer and a recognized or certified employee  
5 organization or any hearing officer policy and procedure currently  
6 existing for state employees designated managerial or confidential which  
7 was in effect on the effective date of this subdivision.

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

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

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

37 3-a. Suspension pending determination of charges and penalties relat-  
38 ing to police officers of the police department of the city of New York.  
39 [~~Pending~~] Notwithstanding the provisions of subdivision three of this  
40 section, pending the hearing and determination of charges of incompeten-  
41 cy or misconduct, a police officer employed by the police department of  
42 the city of New York may be suspended without pay for a period not  
43 exceeding thirty days. If such officer is found guilty of the charges,  
44 the police commissioner of such department may punish the police officer  
45 pursuant to the provisions of sections 14-115 and 14-123 of the adminis-  
46 trative code of the city of New York.

47 3-b. Suspension pending determination of charges; penalties; non-New  
48 York city employees. For any employee described in paragraph (a), (b),  
49 (c), or (e) of subdivision one of this section not in the service of  
50 the city of New York, pending the hearing and determination of charges  
51 of incompetency or misconduct, the officer or employee against whom such  
52 charges have been preferred may be suspended for a period not exceeding  
53 thirty days. The suspension shall be with pay. If such officer or  
54 employee is found guilty of the charges, the penalty or punishment may  
55 consist of a reprimand, a fine not to exceed one hundred dollars to be  
56 deducted from the salary or wages of such officer or employee, suspen-

1 sion without pay for a period not exceeding two months, demotion in  
2 grade and title, or dismissal from the service. If he or she is acquit-  
3 ted, he or she shall be restored to his or her position. If such officer  
4 or employee is found guilty, a copy of the charges, his or her written  
5 answer thereto, a transcript of the hearing, and the determination shall  
6 be filed in the office of the department or agency in which he or she  
7 has been employed, and a copy thereof shall be filed with the civil  
8 service commission having jurisdiction over such position. A copy of the  
9 transcript of the hearing shall, upon request of the officer or employee  
10 affected, be furnished to him or her without charge.

11 § 4. This act shall take effect immediately.