STATE OF NEW YORK

9932

IN ASSEMBLY

April 26, 2024

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

AN ACT to amend the civil service law, in relation to hearing officers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 72 of the civil service law, as amended by chapter 547 of the laws of 1984, is amended to read as follows:

1. When in the judgment of an appointing authority an employee is unable to perform the duties of [~~his or her~~] **such employee's** position by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workers' compensation law, the appointing authority may require such employee to undergo a medical examination to be conducted by a medical officer selected by the civil service department or municipal commission having jurisdiction. Written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of [~~his or her~~] **such employee's** position shall be provided to the employee and the civil service department or commission having jurisdiction prior to the conduct of the medical examination. If, upon such medical examination, such medical officer shall certify that such employee is not physically or mentally fit to perform the duties of [~~his or her~~] **such employee's** position, the appointing authority shall notify such employee that [~~he or she~~] **they** may be placed on leave of absence. An employee placed on leave of absence pursuant to this section shall be given a written statement of the reasons therefor. Such notice shall contain the reason for the proposed leave and the proposed date on which such leave is to commence, shall be made in writing and served in person or by first class, registered or certified mail, return receipt requested, upon the employee. Such notice shall also inform the employee of [~~his or her~~] **their** rights under this procedure. An employee shall be allowed ten working days from service of the notice to object to the imposition of the proposed leave of absence and to request a hearing. The request for such hearing shall be filed by the employee personally or by first

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

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class, certified or registered mail, return receipt requested. Upon receipt of such request, the appointing authority shall supply to the employee, [~~his or her~~] **such employee's** personal physician or authorized representative, copies of all diagnoses, test results, observations and other data supporting the certification, and imposition of the proposed leave of absence shall be held in abeyance until a final determination is made by the appointing authority as provided in this section. The appointing authority will afford the employee a hearing within thirty days of the date of a request by the employee to be held by an independent hearing officer agreed to by the appointing authority and the employee except that where the employer is a city of over one million in population such hearing may be held by a hearing officer employed by the office of administrative trials and hearings. If the parties are unable to agree upon a hearing officer, [~~he or she~~] **such hearing officer** shall be selected by lot from a list of persons maintained by the state department of civil service. The hearing officer shall not be an employee of the same appointing authority as the employee alleged to be disabled. [~~He or she~~] **The hearing officer** shall be vested with all of the powers of the appointing authority, and shall make a record of the hearing which shall, with [~~his or her recommendation, be referred to the appointing authority for review and~~] **such hearing officer's** decision [~~and which shall~~] be provided to the affected employee free of charge. A copy of the transcript of the hearing shall, upon request of the employee affected, be transmitted to [~~him~~] **such employee** without charge. The employee may be represented at any hearing by counsel or a representative of a certified or recognized employee organization and may present medical experts and other witnesses or evidence. The employee shall be entitled to a reasonable period of time to obtain such representation. The burden of proving mental or physical unfitness shall be upon the person alleging it. Compliance with technical rules of evidence shall not be required. [~~The appointing authority will render a final determination within ten working days of the date of receipt of the hearing officer's report and recommendation. The appointing authority may either uphold the original proposed notice of leave of absence, withdraw such notice or modify the notice as appropriate.~~] In any event, a final determination of an employee's contest of a notice of leave shall be rendered within seventy-five days of the receipt of the request for review. An employee on such leave of absence shall be entitled to draw all accumulated, unused sick leave, vacation, overtime and other time allowances standing to [~~his or her~~] **such employee's** credit. The [~~appointing authority~~] **hearing officer** in the final determination shall notify the **appointing authority or the** employee of [~~his or her~~] **such employee's** right to appeal from such determination to the civil service commission having jurisdiction in accordance with subdivision three of this section.

§ 2. This act shall take effect immediately.