

STATE OF NEW YORK

9935

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 the disclosure of information to employees

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

1 Section 1. Subdivision 1 of section 72 of the civil service law, as
2 amended by chapter 547 of the laws of 1984, is amended to read as
3 follows:
4 1. When in the judgment of an appointing authority an employee is
5 unable to perform the duties of [~~his or her~~] such employee's position by
6 reason of a disability, other than a disability resulting from occupa-
7 tional injury or disease as defined in the workers' compensation law,
8 the appointing authority may require such employee to undergo a medical
9 examination to be conducted by a medical officer selected by the civil
10 service department or municipal commission having jurisdiction. Written
11 notice of the facts providing the basis for the judgment of the appoint-
12 ing authority that the employee is not fit to perform the duties of [~~his~~
13 ~~or her~~] such employee's position, and copies of any written, electronic
14 or other communication by the appointing authority to a medical officer
15 or any other entity regarding the claim that such employee is unable to
16 perform their duties pursuant to this section, shall be provided to the
17 employee, the authorized representative of such employee and the civil
18 service department or commission having jurisdiction prior to the
19 conduct of the medical examination. If, upon such medical examination,
20 such medical officer shall certify that such employee is not physically
21 or mentally fit to perform the duties of [~~his or her~~] such employee's
22 position, the appointing authority shall notify such employee that [~~he~~
23 ~~or she~~] they may be placed on leave of absence. An employee placed on
24 leave of absence pursuant to this section shall be given a written
25 statement of the reasons therefor and complete copies of all of the
26 documentation, reports and records relied upon by the medical officer
27 during their examination, including any documents, reports and corre-
28 spondence sent to the appointing authority at the conclusion of the

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

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1 examination. Such notice shall contain the reason for the proposed leave
2 and the proposed date on which such leave is to commence, shall be made
3 in writing and served in person or by first class, registered or certi-
4 fied mail, return receipt requested, upon the employee. Such notice
5 shall also inform the employee of [~~his or her~~] their rights under this
6 procedure. An employee shall be allowed ten working days from service of
7 the notice to object to the imposition of the proposed leave of absence
8 and to request a hearing. The request for such hearing shall be filed by
9 the employee personally or by first class, certified or registered mail,
10 return receipt requested. Upon receipt of such request, the appointing
11 authority shall supply to the employee, [~~his or her~~] such employee's
12 personal physician or authorized representative, copies of all diag-
13 noses, test results, observations and other data supporting the certifi-
14 cation, and imposition of the proposed leave of absence shall be held
15 in abeyance until a final determination is made by the appointing
16 authority as provided in this section. The appointing authority will
17 afford the employee a hearing within thirty days of the date of a
18 request by the employee to be held by an independent hearing officer
19 agreed to by the appointing authority and the employee except that where
20 the employer is a city of over one million in population such hearing
21 may be held by a hearing officer employed by the office of administra-
22 tive trials and hearings. If the parties are unable to agree upon a
23 hearing officer, [~~he or she~~] such hearing officer shall be selected by
24 lot from a list of persons maintained by the state department of civil
25 service. The hearing officer shall not be an employee of the same
26 appointing authority as the employee alleged to be disabled. [~~He or she~~]
27 The hearing officer shall be vested with all of the powers of the
28 appointing authority, and shall make a record of the hearing which
29 shall, with [~~his or her~~] such hearing officer's recommendation, be
30 referred to the appointing authority for review and decision and which
31 shall be provided to the affected employee free of charge. A copy of the
32 transcript of the hearing shall, upon request of the employee affected,
33 be transmitted to [~~him~~] such employee without charge. The employee may
34 be represented at any hearing by counsel or a representative of a certi-
35 fied or recognized employee organization and may present medical experts
36 and other witnesses or evidence. The employee shall be entitled to a
37 reasonable period of time to obtain such representation. The burden of
38 proving mental or physical unfitness shall be upon the person alleging
39 it. Compliance with technical rules of evidence shall not be required.
40 The appointing authority will render a final determination within ten
41 working days of the date of receipt of the hearing officer's report and
42 recommendation. The appointing authority may either uphold the original
43 proposed notice of leave of absence, withdraw such notice or modify the
44 notice as appropriate. In any event, a final determination of an employ-
45 ee's contest of a notice of leave shall be rendered within seventy-five
46 days of the receipt of the request for review. An employee on such leave
47 of absence shall be entitled to draw all accumulated, unused sick leave,
48 vacation, overtime and other time allowances standing to [~~his or her~~]
49 such employee's credit. The appointing authority in the final determi-
50 nation shall notify the employee of [~~his or her~~] such employee's right
51 to appeal from such determination to the civil service commission having
52 jurisdiction in accordance with subdivision three of this section.

53 § 2. This act shall take effect on the first of January next succeed-
54 ing the date on which it shall have become a law.