

STATE OF NEW YORK

5816

2025-2026 Regular Sessions

IN ASSEMBLY

February 20, 2025

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:

1 Section 1. Subdivision 1 of section 72 of the civil service law, as
2 amended by chapter 306 of the laws of 2024, 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 such employee's position by reason of a
6 disability, other than a disability resulting from occupational injury
7 or disease as defined in the workers' compensation law, the appointing
8 authority may require such employee to undergo a medical examination to
9 be conducted by a medical officer selected by the civil service depart-
10 ment or municipal commission having jurisdiction. Written notice of the
11 facts providing the basis for the judgment of the appointing authority
12 that the employee is not fit to perform the duties of such employee's
13 position, and copies of any written, electronic or other communication
14 by the appointing authority to a medical officer or any other entity
15 regarding the claim that such employee is unable to perform their duties
16 pursuant to this section, shall be provided to the employee, the author-
17 ized representative of such employee and the civil service department or
18 commission having jurisdiction prior to the conduct of the medical exam-
19 ination. If, upon such medical examination, such medical officer shall
20 certify that such employee is not physically or mentally fit to perform
21 the duties of such employee's position, the appointing authority shall
22 notify such employee that they may be placed on leave of absence. An
23 employee placed on leave of absence pursuant to this section shall be
24 given a written statement of the reasons therefor and complete copies of
25 all of the documentation, reports and records relied upon by the medical
26 officer during their examination, including any documents, reports and

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

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

54 § 2. This act shall take effect immediately.