

New York State Civil Service Law

Moriah Olsen


LRS, Tarrytown Regional Office

August 2023





History (very brief) of Civil Service

- Created to end the practice of awarding of public sector jobs to friends, relatives and loyal supporters of elected officials (patronage)
 - In 1882 the Pendleton Act (Federal) was passed that established the principle of selection based on “merit and fitness” of the candidates when filling public service positions
 - Provided for a three-member Civil Service Commission
 - The Commission was charged with making rules for carrying out the basic provisions of the law
 - In NYS Assemblyman Theodore Roosevelt introduced Civil Service Legislation (State) in the NYS Legislature which was signed into law by Governor Grover Cleveland on May 4, 1883
- 



History cont'd

- ▶ In 1913, the Civil Service Commission recommended that there be three alternate forms of administration:
 - ▶ local civil service commission
 - ▶ a county personnel office
 - ▶ administration of the Civil Service Law for a particular county by the State Civil Service Department
- ▶ In 1943, New York State extended the Civil Service Laws to all civil divisions including towns and counties. Prior to that, certain individual positions in towns and counties were examined “in accordance with merit and fitness” but the law did not extend to all public employments
- ▶ In 1965, the option for the state to administer a county program was eliminated – where an agency that lies in more than one county exists, the counties must agree which civil service division has jurisdiction. If they can't agree, the civil service agency of the county in which the most territory of the new agency is located rules
- ▶ In 1970, suburban towns of more than 200,000 people could form their own civil service division (that was changed to 50,000 people in 1972)



Regional Divisions



- <http://rocklandgov.com/departments/personnel/>
- <https://humanresources.westchestergov.com/>
- <https://www.orangecountygov.com/1137/Human-Resources>
- <https://www.putnamcountyny.com/personneldept/>
- <https://middletown-ny.com/en/departments/civil-service.html>
- <https://cmvny.com/departments/human-resources/>
- <https://ny-newrochelle2.civicplus.com/362/Civil-Service>
- <https://www.yonkersny.gov/work/jobs-civil-service-exams>



Jurisdictional Classification

- ▶ “Appointments of all promotions in the civil service shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive;...”

▶ Article V, Section 6 – New York State Constitution



Job Classifications

Unclassified Service (§35)

Classified Service (§40)

- Exempt Class (§41)
- Non-Competitive Class (§42)
- Labor Class (§43)
- Competitive Class (§44)



Unclassified Service (§35)

- Elected officials
- Positions filled by appointment on joint legislative ballot
- Board of elections employees/members
- Superintendents, principals, teachers (public k-12 and public higher ed – designated by Comm of Ed)



Unclassified Service (§35) (Continued)

- ▶ No Examination
- ▶ No Tenure or Job Property Rights
 - ▶ Tenure Rights for Teachers and Teaching Assistants Provided Under Education Law
- ▶ Generally Serve at the Pleasure of Appointing Authority



Classified Service (§40)

Exempt Class (§41)

- One secretary of each state department or division,
- Deputies of executive officers authorized to act in place of their principals,
- Clerk and deputy clerk of each court (if authorized),
- Offices or positions where competitive or non-comp exams are not practicable – must be re-evaluated when vacated



Classified Service (§40) Non-Competitive Class (§42)

- ▶ Not in exempt or labor class which are impracticable to include in the competitive class
 - ▶ Appropriate Civil Service Agency determined it is not practicable to fill through competitive examination
 - ▶ Civil Service agency examines candidates on non-competitive
 - ▶ May include written or oral examination, but usually review of application
- ▶ All positions are initially presumed in the competitive class
 - ▶ Moving positions to the non-competitive class is a multi-step process



Classified Service (§40) Labor Class (§43)

- “Unskilled Labor” positions (the law’s words, not mine)
- Appropriate Civil Service agency ensures nominee’s fitness for duty
- Review of Application to ensure compliance with minimum qualifications
- Often includes pre-employment medical examination



Classified Service (§40) Competitive Class (§44)

- ▶ All positions for which it is practicable to determine the merit and fitness of applicants by competitive exam.
- ▶ Appointment made through competitive examination
 - ▶ Typically, through written examination, but there are limited exceptions
- ▶ Competitive class maintain the most automatic rights under NYS Civil Service Law

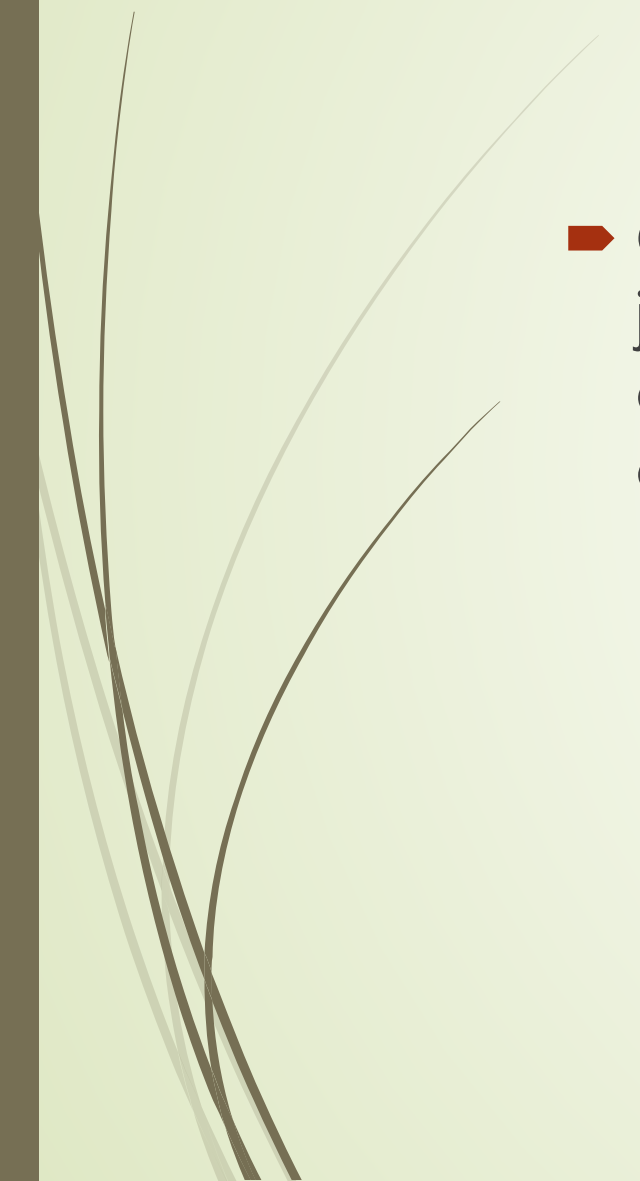


Jurisdictional Classification

- ▶ How do we know what class a position falls within?
- ▶ Every Civil Service Agency has published rules with Appendices
- ▶ Appendices List all titles not in the competitive class



Title Classification

- ▶ Once positions are organized into their jurisdictional classification, there is further organization within those jurisdictional classifications
- 

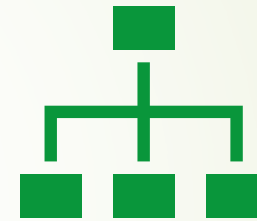
Title Classification



Titles grouped together based on type of work involved

Differ in rank based on:

- Importance of Duties
- Degree of Responsibility
- Amount of Training and Experience Required



Title Grouping Constitutes a Title (Career) Series

Titles contain common term descriptive of type of work

Modifying term indicative of rank within title (career) series

Title Classification

➤ Classification Standards/Job Specifications

- Civil Service Agency maintains Job Specification for every position within its jurisdiction
- Every Job Specification includes:
 - Class Title
 - Distinguishing features of the class
 - Typical work activities
 - Full Performance, knowledge, skill, abilities, and personal characteristics
 - Minimum Qualifications

Title Classification

Reclassification



Change in title with or without change in salary grade



Requires significant change in duties/responsibilities of position making former title (potentially salary grade) inappropriate



May reclassify position to another existing title or establish new title (rare)



Employee or employer may file request for reclassification with appropriate civil service agency. Reclassification is more likely if both employer and employee file.

Title Classification

Reclassification (Continued)

Approval of reclassification does not guarantee employee who initiated the filing will receive appointment to the newly reclassified position

Competitive Class – Employee must be reachable on certified eligible list

Employee must meet minimum qualifications

Employer must appoint employee to newly reclassified position

CBA may have bidding/seniority requirements

Appointment

➤ **Non-Competitive and Labor Classes**

- Appointing Authority Nominates Candidate to Appropriate Civil Service Agency
- Civil Service Agency reviews candidate's application to ensure minimum qualifications are met
- Civil Service Agency reviews any pre-employment medical exam to ensure physical fitness for labor class positions

Competitive Class Appointment

➤ Provisional Appointment

- Only permissible when no valid eligible list exists for position
- Appointing officer nominates – Civil Service agency reviews to ensure minimum qualifications are met (very liberal in this review)
- Competitive Examination must be requested within one month
- Provisional Appointments shall not serve more than nine months (not followed or enforced in any way)

Competitive Class Appointment

➤ Provisional Appointment (continued)

- Provisional Appointments have no job property rights
- Provisional Service does not count toward seniority accrual
- Provisional Appointment never ripens into permanent status without competitive examination
- In event of layoff, provisional employees “must” be laid off

Competitive Class Appointment

Temporary Appointments §64

Not to exceed three months

- Urgent and important – emergency type situation
- Candidates need not be on eligible list
- Example – natural disaster necessitating large number of employees for short term

Exceeds three months, but not more than six months

- Appointments must be made from eligible list
- Candidates need not be reachable for permanent appointment
- Permitted when position will not exist for more than six months

Competitive Class Appointment

Temporary Appointments (continued)

Exceeds six months

- Must be reachable for permanent appointment off certified eligible list (rule of three)
- If appointment exceeds six months, law states appointment must cease, but civil service agency may approve extension
- In practice, requests for extension are routinely granted

Temporary Appointment Backfilling Approved Leave

- Temporary Appointment may last as long as associated leave of absence
- Must be on certified eligible list, but do not have to be reachable
- Temporary employees maintain no job property rights

Promotional by Nature – Only available to permanent employee of the Appointing Authority

Available because of approved LOA of permanent employee in higher grade title

Candidate must be reachable on certified eligible list

Contingent Permanent appointment has all the rights associate with permanent appointing except:

- If incumbent returns, contingent permanent employee is displaced and placed on preferred list

24

Competitive Class Appointments

Contingent Permanent

Competitive Class Appointments

Permanent Appointment

Examination Announcement

- Minimum Requirements to sit for examination
- Deadline for receipt of application
- Date of Exam
- Type of Exam (oral, written, practical, training/experience evaluation, physical agility, medical)
- Subjects of exam – knowledge, skills, abilities included
- Duties of position
- Salary Grade for position

If Disqualified from taking exam, appeals process exists

Competitive Class Appointments

Permanent Appointment

Traditional Versus Band Scoring

Traditional Scoring

- Shakima Greggs – 100%
- Cedrick Daniels – 99%
- Lester Freeman– 99%
- Avon Barksdale– 98%
- Stringer Bell – 97%
- Omar Little – 95%
- Jimmy McNulty– 94%
- Marlo Stanfield – 93%
- Rhonda Pearlman – 89%
- Tommy Carcetti – 87%

Band (Zone) Scoring

- Shakima Greggs – 100%
- Cedrick Daniels – 100%
- Lester Freeman– 100%
- Avon Barksdale– 100%
- Stringer Bell – 100%
- Omar Little 95%
- Jimmy McNulty– 95%
- Marlo Stanfield – 95%
- Rhonda Pearlman – 90%
- Tommy Carcetti – 90%

Competitive Class Appointment

Promotional Appointments



Departmental

Only those candidates within the department eligible
 Definition of department normally found in Local Civil Service Rules
 Candidates need to maintain permanent competitive class status
 Specified Length of Service often a qualifier



Interdepartmental

Open to persons in some lower-level titles in some governmental jurisdictions
 Eligible list is subdivided by departments
 Vacancies filled in departmental list first
 Full interdepartmental list may be utilized when departmental list is exhausted (falls below three)



Non-Competitive Promotion

Three or less persons eligible for promotional examination
 Appointing authority can make candidate selection immediately
 Only the nominee sits for examination and receives permanent appointment upon passing examination
 Civil service agency must approve request from appointing authority
 Rare



Simultaneous Promotion and Open-Competitive

Arrangement is held when promotional list will not be large enough for anticipated vacancies
 Promotional list must be used first
 Open competitive list may be accessed once promotional list is exhausted (falls below three)
 Open competitive list automatically expires one year after promotional list is exhausted

Competitive Class Appointments

Promotional Appointments

Employee maintains permanency in formerly held title

Important if employee fails to successfully complete probation in the promotional title

Also important in case of a reduction in force

In cases of provisional promotional appointments, it is vitally important that the candidate not resign their formerly held permanent position

Probationary Term

Considered Part of the Examination Process

- Employer opportunity to assess on-the-job performance
- Areas where examination cannot assess

Variance by Civil Service Agency/Commission

- Duration
- Fixed vs Flexible
- Application by Jurisdictional Classification

Termination/Extension of Probation

- Unsatisfactory performance/conduct
- No due process, only rights against non-discrimination
- Two-week notice requirement
- Rather than termination, employer may offer second term
- Absences may extend term

Promotional Probationary Term

- Varies by Local agency/commission
- Failure to complete results in loss of position
- Corresponding leave from former title/position

“Prohibition against out-of-title work. No person shall be appointed, promoted or employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of this chapter and rules prescribed thereunder. No credit shall be granted in promotion examination for out-of-title work.”

New York State Civil Service Law §61 (2)

Out-of-Title Work

► Investigation

- Consult CBA – may be a contractual definition more favorable than the law provides
- Duties associated with Civil Service title are found in the Civil Service job specifications kept on file in each Civil Service Agency

Out of-Title Work Exceptions

Temporary Emergencies

- CBA may provide definition of temporary emergency
- Absent contract language, the generally accepted definition is an “unforeseeable circumstance”

Irregular and Infrequent

- Relevant case law has found occasional duties performed beyond the scope of the job classification that are substantially similar to the duties to the job classification is permissible
- Need to establish at least 40% (some say more) to defeat occasional exception

Out-of-Title Work Remedies

Contractual Remedies

- CBA may provide higher rate of pay for out-of-title work
- Successful grievance may result in back pay
- Ultimate result is cease and desist if work is out of compliance with Civil Service Law §61 (2)

Legal Remedies

- Article 78 CPLR
- No avenue to achieve higher pay
- Cease and desist only remedy available
- Regardless of forum, appointment to higher grade position is not a remedy available



Transfers (§70)

- ▶ Lateral Transfer
 - ▶ Transfer to a similar title within your own employer or to a similar title with a different employer without taking a further examination
- ▶ Occupational Transfer
 - ▶ Transfer to a different occupational area in a title that you are appropriately qualified for (passed the exam)
- ▶ Conditions for a Transfer
 - ▶ Must be eligible for the position you are seeking transfer to
 - ▶ Must be within two salary grades above your current position
 - ▶ No preferred list exists for the position seeking a transfer to
- ▶ NOTE: Do not confuse a transfer with a REASSIGNMENT – reassign from one office to another, not change in job title



Work Related Injury/Illness **NYS Civil Service Law §71**

- After one year the employer may (nothing forces them to do so) terminate the injured employee
- One year is cumulative rather than consecutive for the same injury
- If employee is medically cleared within one year following termination, employer must reinstate employee to vacant position
- If no vacancy exists, employee is placed on preferred list for a period of four years

Leave for Ordinary Disability

New York State Civil Service Law §72

- Appointing authority suspects employee is unable to perform essential functions of job because of medical disability
- Appointing authority may require employee to undergo Independent Medical Examination
- Written notice of the facts providing the basis for the employer's judgement that employee is medically unfit provided to employee and civil service agency prior to medical exam

Non-Work-Related Injury/Illness

New York State Civil Service Law §73

- ▶ After one-year continuous year of absence because of a non-work-related injury/illness, an employer may (nothing forces them) terminate the disabled employee
- ▶ If employee is medically cleared within one year of termination, employer must reinstate the employee to vacant position
- ▶ If no vacancy exists, the employee is placed on a preferred list for a period of four years



Discipline and Discharge

§75 NYS Civil Service Law

- ▶ Covered employee shall not be removed or otherwise subjected to disciplinary penalty Except for misconduct or incompetence
 - ▶ Incompetence – inability to perform the functions of the job
 - ▶ Misconduct – intentional wrongdoing, deliberate violation of law or rule, improper behavior, refusal to comply



Discipline and Discharge

§75 NYS Civil Service Law

Covered Employees

- Permanent Competitive Class (completed probation)
- Non-Competitive & Labor Class – Five (5) continuous and interrupted years
- Qualified Veterans & Exempt Volunteer Firefighters

Excluded

- Unclassified
- Exempt
- Probationary
- Provisional and Temporary

Discipline and Discharge

§75 NYS Civil Service Law

Right to Representation

- Notification of Right Prior to Questioning
- Reasonable Time to Obtain Representation
- Employee right to private counsel or union representative during hearing

Notice of Charges

- Notice of Discipline (NOD)
- Must contain description of allegations/reasons
- Eight (8) Calendar Days to Answer Charges
- Suspension for up to thirty (30) days pending hearing

Right to Hearing

- Evidentiary hearing with transcripts provided
- Employer's burden – preponderance of evidence
- Employer appoints hearing officer or may serve as hearing officer
- Hearing officer recommendation may be disregarded by employer

Penalties Limited

- Reprimand
- Fine not to exceed \$100
- Suspension without pay up to two (2) months
- Demotion in grade and title
- Termination/Dismissal

Discipline and Discharge

§75 NYS Civil Service Law

Determinations
May be
appealed

- Article 78 CPLR
- Very difficult arbitrary and capricious standard

Collective
Bargaining may
improve or
replace §75

- Law provides a floor of rights, but contract can improve upon
- Just Cause arbitration preferrable

Reductions in Force

Layoff and Recall

► Layoff Unit

- Layoff Units in Local Government are by department
- What the employer may call a department may not be recognized as a department under the law
 - Ex: County Clerk refers to the pistol permit office as a department, however the County Charter or local law recognizes the entire County Clerk's office as one department and therefore the appropriate layoff unit

Reductions in Force Layoff and Recall

► Seniority

- Seniority determined from the first date of permanent appointment in the classified service
 - Key word is permanent – temporary or provisional service that precedes first permanent appointment does not count toward seniority
 - Provisional or temporary time in promotional positions sandwiched between permanent service does count toward seniority
- Classified service includes exempt, labor, and non-competitive class service but may depend on local civil service rules
- Service must be continuous, but includes approved leave of absence or periods of resignation if employee returned within one year
- Special Conditions
 - Veterans – additional 30 months
 - Disabled Veterans – additional 60 months
 - Legally Blind – absolute preference in retention



Reductions in Force **Layoff and Recall**

➔ Order of Layoff

1. Temporary and Provisional within affected layoff unit
2. Probationers within affected position in the layoff unit
3. Permanent employees in reverse order of seniority within the affected title in the layoff unit

Reductions in Force Layoff and Recall

➤ Vertical Bumping

- Least senior employee in affected title may be eligible to bump the least senior employee in the next lower title in the direct line of promotion (title (career) series)
- Affected employee need not have previously held title
- Competitive employee may not bump outside of jurisdictional classification

Reductions in Force

Layoff and Recall

▶ Retreat Rights

- ▶ Outside the direct line of promotion
- ▶ Only possible when employee previously held the position on a permanent basis
- ▶ Affected employee may displace the least senior employee in that title if:
 - ▶ Position to which retreat is sought is occupied
 - ▶ Retreating employee's service while in former position was satisfactory
 - ▶ Position to which employee is retreating is in the classified service
 - ▶ Must be in the same layoff unit
 - ▶ Same or lower grade
 - ▶ Retreating employee has more seniority than the employee who would be displaced



Reductions in Force Layoff and Recall

► Preferred List

- If vertical bumping and retreat is not possible, the employee is laid off and placed on a preferred list
- The laid off employee is placed on preferred list for up to four years from their date of layoff
- Appointing authority must fill any future vacancies within the affected title from the preferred list prior to appointing of a certified eligible list

Reductions in Force

Layoff and Recall

▶ **Non-Competitive & Labor Classes**

- ▶ Civil Service Law does not provide any layoff or recall rights
- ▶ Any layoff and recall rights are derived from the collective bargaining agreement



➔ What questions do you have??



Thank you.



As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 35. Unclassified service. The civil service of the state and each of its civil divisions shall be divided into the classified and unclassified service. The unclassified service shall comprise the following:

- (a) all elective offices;
- (b) all offices filled by election or appointment by the legislature on joint ballot;
- (c) all officers and employees of the state legislature, and all officers and employees of any other legislative body whose principal functions and duties are directly related to the performance of the legislative functions of such body;
- (d) all offices filled by appointment by the governor, either upon or without confirmation by the senate, except officers and employees in the executive department who are not heads of divisions therein;
- (e) the head or heads of any department of the government who are vested with authority, direction and control over a department, and who have power and authority to appoint and remove officers and employees therein;
- (f) all members, officers and employees of boards of elections;
- (g) all persons employed by any title whatsoever as members of the teaching and supervisory staff of a school district, board of cooperative educational services or county vocational education and extension board, as certified to the state commission by the commissioner of education. The commissioner of education shall prescribe qualifications for appointment for all classes of positions so certified by him, and shall establish specifications setting forth the qualifications for and the nature and scope of the duties and responsibility of such positions. The commissioner of education shall file such qualifications for appointment and such specifications with the civil service commission;
- (h) all positions in the state university in the professional service as defined in subdivision three of section three hundred fifty-five-a of the education law, which positions shall be determined by the chancellor of the state university and certified by him to the civil service commission; provided, however, that any state university position in the classified service which the chancellor seeks to designate as unclassified must be approved by the civil service commission before such change in designation;
- (i) all positions in community colleges in the professional service as defined in subdivision two of section six thousand three hundred six of the education law, which shall include all positions on the instructional staffs of the fashion institute of technology, the New York city community college of applied arts and sciences, and of the community colleges sponsored by the board of higher education in the city of New York as respectively defined in sections two thousand five hundred eighty-seven, six thousand two hundred six-a, and six thousand two hundred six-b of the education law. Such positions in community colleges other than the fashion institute of technology, the New York city community college of applied arts and sciences, and community colleges sponsored by the board of higher education of the city of New York shall be determined by the board of trustees of such colleges with the approval of the chancellor of state university, and certified by each such board to the commission or officer which administers the civil service law for the local sponsor of the community college administered by such board. Each such board of trustees shall prescribe qualifications for appointment for all classes of positions so certified by it, and shall establish specifications setting forth the qualifications for and the nature and scope of the duties and

responsibilities of such positions. Each such board of trustees shall file such qualifications for appointment and such specifications with the civil service commission and with the commission or officer to which the certification is made;

(j) all persons, other than persons covered under paragraph (g) or paragraph (h) or paragraph (i) of this section, whose principal functions are teaching or the supervision of teaching in a public school, academy or college.

(k) all positions in the professional service in the New York State School for the Blind and the New York State School for the Deaf, requiring the performance of educational functions, which positions shall be determined by the commissioner of education and certified by him to the civil service commission.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 41. Exempt class. 1. The following offices and positions shall be in the exempt class:

(a) one secretary of each state department or division, temporary state commission or other state officer authorized by law to appoint a secretary;

(b) the deputies of principal executive officers authorized by law to act generally for and in place of their principals;

(c) one secretary of each municipal board or commission authorized by law to appoint a secretary;

(d) one clerk and one deputy clerk if authorized by law, of each court, and one clerk of each elective judicial officer, and also one deputy clerk, if authorized by law, of any justice of the supreme court;

(e) all other subordinate offices or positions for the filling of which competitive or non-competitive examination may be found to be not practicable. Not more than one appointment shall be made to or under the title of any office or position placed in the exempt class pursuant to the provisions of this paragraph, unless a different number is specifically prescribed in the rules.

2. No office or position shall be deemed to be in the exempt class unless it is specifically named in such class in the rules. Upon the occurrence of a vacancy in any position in the exempt class, the state or municipal civil service commission having jurisdiction shall study and evaluate such position and, within four months after the occurrence of such vacancy, shall determine whether such position, as then constituted, is properly classified in the exempt class. Pending such determination, said position shall not be filled, except on a temporary basis.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 42. Non-competitive class. 1. The non-competitive class shall include all positions that are not in the exempt class or the labor class and for which it is found by the commission having jurisdiction to be not practicable to ascertain the merit and fitness of applicants by competitive examination. Appointments to positions in the non-competitive class shall be made after such non-competitive examination as is prescribed by the state civil service department or municipal commission having jurisdiction. No position shall be deemed to be in the non-competitive class unless it is specifically named in such class in the rules. Not more than one appointment shall be made to or under the title of any office or position placed in the non-competitive class pursuant to the provisions of this section, unless a different or an unlimited number is specifically prescribed in the rules.

2. With respect to civil divisions of the state whose populations, according to the latest federal decennial census or latest federal special population census, are less than five thousand and, with respect to those civil divisions whose populations are not determined as such by the federal bureau of the census, whose populations are estimated by their respective governing bodies to be less than five thousand, the state commission shall, on or before July first, nineteen hundred sixty-one, promulgate standards for determining the practicality of examination, which it may from time to time thereafter amend, and shall also provide information and advice to municipal commissions, to enable such commissions to utilize the provisions of this section, when appropriate, in order to enable such civil subdivisions to recruit and retain in their employ competent and qualified persons.

2-a. The state or municipal civil service commission by appropriate amendments to its rules shall designate among positions in the non-competitive class in its jurisdiction those positions which are confidential or require the performance of functions influencing policy.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 43. Labor class. 1. The labor class shall comprise all unskilled laborers in the service of the state and each of its civil divisions except those whose positions can be examined for competitively.

2. The state or municipal commission may require applicants for employment in the labor class to qualify in such examinations of their fitness for employment as may be deemed practicable.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 44. Competitive class. The competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination, and shall include all positions now existing or hereafter created, of whatever functions, designations or compensation, in each and every branch of the classified service, except such positions as are in the exempt class, the non-competitive class or the labor class.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 70. Transfers. 1. General provisions. Except as provided in subdivisions four, six and seven of this section no employee shall be transferred to a position for which there is required by this chapter or the rules established hereunder an examination involving essential tests or qualifications different from or higher than those required for the position held by such employee. The state and municipal commissions may adopt rules governing transfers between positions in their respective jurisdictions and may also adopt reciprocal rules providing for the transfer of employees from one governmental jurisdiction to another. No employee shall be transferred without his or her consent except as provided in subdivision six or seven of this section or upon the transfer of functions as provided in subdivision two of this section.

2. Transfer of personnel upon transfer of functions. Upon the transfer of a function (a) from one department or agency of the state to another department or agency of the state, or (b) from one department or agency of a civil division of the state to another department or agency of such civil division, or (c) from one civil division of the state to another civil division of the state, or (d) from a civil division of the state to the state, or vice versa, provision shall be made for the transfer of necessary officers and employees who are substantially engaged in the performance of the function to be transferred. As soon as practicable after the adoption of a law, rule, order or other action directing such a transfer of function, but not less than twenty days prior to the effective date of such transfer, the head of the department or agency from which such function is to be transferred shall certify to the head of the department or agency to which such function is to be transferred a list of the names and titles of those employees substantially engaged in the performance of the function to be transferred, and shall cause copies of such certified list to be publicly and conspicuously posted in the offices of the department or agency from which such function is to be transferred, along with copies of this subdivision. Any employee of the department or agency from which such function is to be transferred may, prior to the effective date of such transfer, protest his or her inclusion in or exclusion from such list by giving notice of such protest in writing addressed to the heads of the respective departments or agencies from which and to which transfer is to be made, which notice shall state the reasons for the protest. The head of the department or agency to which such function is to be transferred shall review the protest and after consultation with the head of the department or agency from which such function is to be transferred notify the protestor within ten days from the receipt of such protest of the determination with respect to such protest. Such determination shall be a final administrative determination. Failure to make such protest shall be deemed to constitute consent to inclusion in or exclusion from, as the case may be, the certified list of employees engaged in the function to be transferred. Officers and employees so transferred shall be transferred without further examination or qualification, and shall retain their respective civil service classifications and status. For the purpose of determining the officers and employees holding permanent appointments in competitive class positions to be transferred, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and non-disabled veterans. Any employee who fails to respond to or accept a written offer of transfer from the department or agency to which such function is to be transferred within ten days after receipt of such offer shall be deemed to have waived entitlement to such transfer. All officers and employees so transferred shall, thereafter, be subject to the rules of

the civil service commission having jurisdiction over the agency to which transfer is made. Officers and employees holding permanent appointments in competitive class positions who are not so transferred shall have their names entered upon an appropriate preferred list for reinstatement to the same or similar positions in the service of the governmental jurisdiction from which transfer is made and in the office or agency to which such function is transferred. Officers and employees transferred to another governmental jurisdiction pursuant to the provisions of this subdivision shall be entitled to full seniority credit for all purposes for service rendered prior to such transfer in the governmental jurisdiction from which transfer is made. Except where such transferred officers and employees are entitled, pursuant to a special law or a rule adopted pursuant to law, to credit upon transfer for their unused vacation or annual leave and sick leave, the officer or body having authority to adopt provisions governing vacation or annual leave and sick leave applicable to the department or agency to which transfer is made may, after giving due consideration to the similarities and differences between the provisions governing vacation or annual leave and sick leave in the respective jurisdictions from which and to which transfer is made, allow employees transferred hereunder credit for all or part of the unused vacation or annual leave and sick leave standing to their credit at the time of transfer, as may be determined equitable, but not in excess of the maximum accumulation permitted in the jurisdiction to which transfer is made. Unused vacation or annual leave not credited by the jurisdiction to which transfer is made may be compensated for to the extent, if any, such compensation is authorized by other law.

4. Transfer and change of title. Notwithstanding the provisions of subdivision one of this section or any other provision of law, any permanent employee in the competitive class who meets all of the requirements for a competitive examination, and is otherwise qualified as determined by the state civil service commission or the municipal civil service commission, as the case may be, shall be eligible for participation in a non-competitive examination in a different position classification, provided, however, that such employee is holding a position in a similar grade.

5. (a) Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, a police department of any county, city, town, village, district, commission, authority or public benefit corporation is dissolved or abolished and the functions of such department are assumed by another police agency by contractual agreement or payment or taxation therefor, the provisions of this section shall apply.

(b) For the purposes of this subdivision:

(1) The term "police agency" shall mean any agency or department of a county, city, town, village, district, commission, authority or public benefit corporation having responsibility for enforcing the criminal laws of the state.

(2) The term "police agency" or "police department" shall not be construed to include the police department of a city of one million or more persons, the police department of a housing authority of a city of one million or more persons, or the police department established pursuant to the provisions of section one thousand two hundred four of the public authorities law.

6. Transfer of personnel. Notwithstanding the provisions of subdivision one of this section or any other provision of law, any city having a population of one million or more may by agreement negotiated between such city and an employee organization pursuant to article

fourteen of this chapter provide for the involuntary transfer of employees between city agencies. For purposes of this subdivision, the term "city agency" shall include any school district, public authority, commission or other instrumentality of government on whose behalf such city is authorized to negotiate collective bargaining agreements.

7. Transfer of Suffolk county park officers levels I-IV to the positions of Suffolk county police officers. Notwithstanding the provisions of subdivision one of this section or any other provision of law, the county of Suffolk may, by agreement negotiated between such county and an employee organization pursuant to article fourteen of this chapter, provide for the transfer of now existing Suffolk county parks police officers levels I-IV to positions of Suffolk county police officers. The transfer of now existing positions may be effectuated without regard to any eligible lists or preferred lists for reinstatement.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 71. Reinstatement after separation for disability. Where an employee has been separated from the service by reason of a disability resulting from occupational injury or disease as defined in the workmen's compensation law, he or she shall be entitled to a leave of absence for at least one year, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position. Notwithstanding the foregoing, where an employee has been separated from the service by reason of a disability resulting from an assault sustained in the course of his or her employment, he or she shall be entitled to a leave of absence for at least two years, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position. Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his or her former position, he or she shall be reinstated to his or her former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which he or she was eligible for transfer. If no appropriate vacancy shall exist to which reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed upon a preferred list for his or her former position, and he or she shall be eligible for reinstatement from such preferred list for a period of four years. In the event that such person is reinstated to a position in a grade lower than that of his or her former position, his or her name shall be placed on the preferred eligible list for his or her former position or any similar position. This section shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 72. Leave for ordinary disability. 1. When in the judgment of an appointing authority an employee is unable to perform the duties of his or her 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 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 position, the appointing authority shall notify such employee that he or she 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 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 class, certified or registered mail, return receipt requested. Upon receipt of such request, the appointing authority shall supply to the employee, his or her 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 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 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 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 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 credit. The appointing authority in the final determination shall notify the employee of his or her right to appeal from such determination to the civil service commission having jurisdiction in accordance with subdivision three of this section.

2. An employee placed on leave pursuant to subdivision one of this section may, within one year after the date of commencement of such leave of absence, or thereafter at any time until his or her employment status is terminated, make application to the civil service department or municipal commission having jurisdiction over the position from which such employee is on leave, for a medical examination by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such employee is physically and mentally fit to perform the duties of his or her position, he or she shall be reinstated to his or her position.

3. An employee who is certified as not physically or mentally fit to perform the duties of his or her position and who is placed on leave of absence pursuant to subdivision one of this section, or who is denied reinstatement after examination pursuant to subdivision two of this section, may appeal from such determination to the state or municipal civil service commission having jurisdiction over his or her position. Such employee and appointing officer or their representatives shall be afforded an opportunity to present facts and arguments in support of their positions including medical evidence at a time and place and in such manner as may be prescribed by the commission. Provided however, that in considering appeals pursuant to subdivision two of this section where a hearing has not been held within nine months from the date of notification pursuant to subdivision one of this section, the commission shall designate an independent hearing officer who shall hold a hearing and report thereon. The commission shall make its determination on the basis of the medical records and such facts and arguments as are presented to it. The final determination of the commission shall be binding on both the employee and the appointing authority; provided, however, that an employee or appointing authority may seek review of a final determination of a commission in accordance with the provisions of article seventy-eight of the civil practice law and rules.

4. If an employee placed on leave pursuant to this section is not reinstated within one year after the date of commencement of such leave, his or her employment status may be terminated in accordance with the provisions of section seventy-three of this article.

5. Notwithstanding any other provisions of this section, if the appointing authority determines that there is probable cause to believe that the continued presence of the employee on the job represents a potential danger to persons or property or would severely interfere with operations, it may place such employee on involuntary leave of absence immediately; provided, however, that the employee shall be entitled to draw all accumulated unused sick leave, vacation, overtime and other time allowances standing to his or her credit. If such an employee is finally determined not to be physically or mentally unfit to perform the duties of his or her position, he or she shall be restored to his or her position and shall have any leave credits or salary that he or she may

have lost because of such involuntary leave of absence restored to him or her less any compensation he or she may have earned in other employment or occupation and any unemployment benefits he or she may have received during such period.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 73. Separation for ordinary disability; reinstatement. When an employee has been continuously absent from and unable to perform the duties of his position for one year or more by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workmen's compensation law, his employment status may be terminated and his position may be filled by a permanent appointment. Such employee may, within one year after the termination of such disability, make application to the civil service department or municipal commission having jurisdiction over the position last held by such employee for a medical examination to be conducted by a medical officer selected for that purpose by such department or commission. If, upon such medical examination, such medical officer shall certify that such person is physically and mentally fit to perform the duties of his former position, he shall be reinstated to his former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field in his former department or agency. If no appropriate vacancy shall exist to which such reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed on a preferred list for his former position in his former department or agency, and he shall be eligible for reinstatement in his former department or agency from such preferred list for a period of four years. In the event that such person is reinstated to a position in a grade lower than that of his former position, his name shall be placed on the preferred eligible list for his former position or any similar position in his former department or agency. This section shall not be deemed to modify or supersede any other provisions of law applicable to the re-employment of persons retired from the public service on account of disability.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 75. Removal and other disciplinary action. 1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States including (i) having a qualifying condition as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, or (ii) being a discharged LGBT veteran, as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee holding a position in the non-competitive or labor class other than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since his or her last entry into service has completed at least five years of continuous service in the non-competitive or labor class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer

has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

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

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

(ii) the claim or defense was commenced or continued in bad faith without any reasonable basis in law or fact. If the claim or defense was

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

(b) The rights set forth in paragraph (a) of this subdivision shall be in addition to, and shall not supplant, modify or replace any rights provided to an employee pursuant to agreements negotiated by a public employer and an employee organization pursuant to article fourteen of this chapter, or pursuant to any other provision of law, including but not limited to other provisions of this section.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found 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 salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 75-a. Civil service proceeding; commencement upon alleged violation of certain provisions of the labor law relating to police officers. 1. Any police officer alleging a violation of section two hundred fifteen-a of the labor law may institute a proceeding pursuant to the provisions of his collective bargaining agreement. If no such agreement exists a complaint may be filed by a police officer with the state or a municipal civil service commission alleging a violation of section two hundred fifteen-a of the labor law; as a condition of entertaining such complaint the commission may require a police officer to exhaust all remedies available to such employee pursuant to the provisions of a collective bargaining agreement and the rules and regulations of the employer. Upon the filing of such complaint or upon its own initiative the commission having jurisdiction may investigate and upon finding an improper transfer or other penalty in violation of such section, enforce the provisions of such section. The commission may exercise any powers heretofore granted to it by provision of this chapter or by any other provision of law necessary for the enforcement of the provisions of section two hundred fifteen-a of the labor law.

2. Nothing in this section shall be construed to abrogate, impair, alter, or in any way modify any right of action in law that an employee, alleged to have been penalized, may have.

As of 07/28/2023 04:22PM, the Laws database is current through 2023
Chapters 1-229, 231-276

Civil Service

§ 76. Appeals from determinations in disciplinary proceedings. 1. Appeals. Any officer or employee believing himself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine, or an official reprimand, unaccompanied by a remittance of said officer or employee's prehearing suspension without pay, imposed pursuant to the provisions of section seventy-five of this chapter, may appeal from such determination either by an application to the state or municipal commission having jurisdiction, or by an application to the court in accordance with the provisions of article seventy-eight of the civil practice law and rules. If such person elects to appeal to such civil service commission, he shall file such appeal in writing within twenty days after service of written notice of the determination to be reviewed, such written notice to be delivered personally or by registered mail to the last known address of such person and when notice is given by registered mail, such person shall be allowed an additional three days in which to file such appeal.

2. Procedure on appeal. Where appeal is taken to the state or municipal commission having jurisdiction, such commission shall review the record of the disciplinary proceeding and the transcript of the hearing, and shall determine such appeal on the basis of such record and transcript and such oral or written argument as the commission may determine. The commission may direct that such appeal shall be heard by one or more members of the commission or by a person or persons designated by the commission to hear such appeal on its behalf, who shall report thereon with recommendations to the commission. Upon such appeal the commission shall permit the employee to be represented by counsel.

3. Determination on appeal. The determination appealed from may be affirmed, reversed, or modified, and the state or municipal commission having jurisdiction may, in its discretion, direct the reinstatement of the appellant or permit the transfer of such appellant to a vacancy in a similar position in another division or department, or direct that his name be placed upon a preferred list pursuant to section eighty-one of this chapter. In the event that a transfer is not effected, the commission is empowered to direct the reinstatement of such officer or employee. An employee reinstated pursuant to this subdivision shall receive the salary or compensation he would have been entitled by law to have received in his position for the period of removal including any prior period of suspension without pay, less the amount of any unemployment insurance benefits he may have received during such period. The decision of such civil service commission shall be final and conclusive, and not subject to further review in any court.

4. Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division. Such sections may be supplemented, modified or replaced by agreements negotiated between the state and an employee organization pursuant to article fourteen of this chapter. Where such sections are so supplemented, modified or replaced, any employee against whom charges have been preferred prior to the effective date of such supplementation, modification or replacement shall continue to be subject to the provisions of such sections as in effect on the date such charges were preferred.