



1 of 1 DOCUMENT

NEW YORK CODES, RULES AND REGULATIONS

*** This document reflects those changes received from the ***
*** NY Bill Drafting Commission through June 5, 2015 ***

TITLE 4. DEPARTMENT OF CIVIL SERVICE
CHAPTER I. RULES FOR THE CLASSIFIED SERVICE
PART 5. PERSONNEL CHANGES

4 NYCRR § 5.9 (2015)

§ 5.9 Restoration to duty from workers' compensation leave, termination of service upon exhaustion or termination of workers' compensation leave, or reinstatement following termination due to disability arising from occupational injury or disease

(a) Applicability. These rules shall govern procedures for restoration to duty from workers' compensation leave, termination of service upon exhaustion or termination of workers' compensation leave, reinstatement to service, or entitlement to placement upon a preferred eligible list, for all State employees who are subject to *section 71 of the Civil Service Law*.

(b) Notice upon granting workers' compensation leave. After notice that payment of compensation has begun, and no later than the twenty-first day of absence due to an occupational injury or disease as defined in the Workers' Compensation Law, the appointing authority shall notify the employee in writing of the effective date of beginning of that leave; the right to leave of absence from the position during continued disability for one year unless extended; the right to apply to the appointing authority to return to duty pursuant to subdivision (d) of this section at any time during the leave; the right to a hearing to contest a finding of unfitness for restoration to duty; the termination of employment as a matter of law at the expiration of the workers' compensation leave; and the right thereafter to apply to the Civil Service Department within one year of the end of disability for reinstatement to the position if vacant, to a similar position, or to a preferred list pursuant to *section 71 of the Civil Service Law* and subdivision (e) of this section.

(c) Termination of service upon exhaustion or termination of workers' compensation leave.

(1) Upon the exhaustion of leave for disability resulting from an occupational injury or disease as defined in the workers' compensation law, or upon termination of such leave upon a finding that the disability is of such a nature as to permanently incapacitate the employee from performance of the duties of the position, the service of the employee shall be terminated as a matter of law.

(2) However, no such termination of service, if not the result of a hearing, shall be effective until 30 days from the service upon the employee, in person or by mail, of a notice of such impending

4 NYCRR § 5.9

action, which shall notify the employee of the proposed effective date of the termination; the right to apply to the appointing authority pursuant to subdivision (d) of this section for reinstatement to duty if medically fit; the obligation to submit to a medical examination to determine fitness to perform the duties of the position, the right to a hearing to contest a finding of unfitness for restoration to duty; and the right after termination of employment to apply to the Civil Service Department within one year of the end of disability for reinstatement to the position if vacant, to a similar position, or to a preferred list, pursuant to *section 71 of the Civil Service Law* and subdivision (e) of this section.

(3) The final notice of termination shall notify the affected employee of the right to apply to the Civil Service Department within one year of the end of disability for reinstatement to employment or a preferred list pursuant to *Civil Service Law, section 71* and subdivision (e) of this section.

(d) Restoration to duty from workers' compensation leave.

(1) Upon request by the employee, the appointing authority, if satisfied that the employee is medically fit to perform the duties of the position, shall restore the employee to duty. If not satisfied that the employee is medically fit to perform the duties of the position, the appointing authority shall require the employee to undergo a medical examination, by a physician designated by the appointing authority, before the employee may be restored to duty. Prior to the medical examination, the appointing authority shall provide the designated physician and the employee with a statement of the regularly assigned duties of the position from which the employee is on leave.

(2) The employee, if found by the examining physician to be fit to perform the duties of the position from which the employee is on leave, shall be restored to duty.

(3) An employee who is not certified by the examining physician to be fit, may in the discretion of the appointing authority, upon the request of the employee, be restored to duty notwithstanding that finding, based upon all information available.

(4) An employee who is certified by the physician designated by the appointing authority to be unfit for duty at that time or to be permanently incapacitated from performing the duties of the job, and whom the employer proposed to refuse to restore to duty, shall be given written notice by the appointing authority of such refusal, the reason therefor, the right to a hearing if the employee wishes to contest that refusal, the procedures and time limit to apply for a hearing, and a copy of the medical report and any other records on which that decision is based, which shall be delivered personally, or mailed by certified mail to the employee at the employee's address of record. The employee may apply in writing to the appointing authority within 10 working days of the personal service or service by mail of the notice of refusal, for a hearing before a hearing officer who, except as specified herein, shall be appointed and shall conduct the proceedings in accord with article 3 of the State Administrative Procedure Act. The employee may be represented or assisted by an attorney or by a representative of the labor organization, if any, certified or recognized to represent the employee's bargaining unit. The hearing officer shall receive documents and testimony as well as written and oral argument on the issues of the medical condition of the employee, the duties of the position, and the ability of the employee to perform those duties, and shall submit the record of the proceeding, together with recommendations, to the appointing authority.

(5) The appointing authority shall issue a written finding of facts and determination restoring the employee to duty, continuing the workers' compensation leave, or terminating the workers' compensation leave upon a finding of permanent incapacitation from the duties of the position pursuant

to *Civil Service Law, section 71*. The determination of the appointing authority shall be based upon the record as a whole, assembled by the hearing officer, and shall be final, subject only to judicial review pursuant to article 78 of the Civil Practice Law and Rules.

(6) The appointing authority shall not be required to entertain more than one such application for restoration to duty from any single employee during any six month period. However, nothing herein shall limit the right of the employee to submit, and the duty of the appointing authority to consider, one application made during the final 30 days of the workers' compensation leave. If the appointing authority has not rendered a decision prior to the expiration of the workers' compensation leave, and except to the extent that delay has been occasioned by any action or inaction on the part of the employee, that leave shall be extended to include the date of decision by the appointing authority.

(e) Reinstatement after termination of leave.

(1) At any time after termination of workers' compensation leave and within one year after termination of the disability resulting from the State employment related occupational injury or disease as defined in the Workers' Compensation Law, the former employee may apply to the Civil Service Department for a medical examination to be conducted by a physician selected by the department. Upon application for examination, the former employing agency shall be requested to provide a statement of the duties regularly required of incumbents in the title to which restoration to duty is requested. If obtaining that statement would unduly delay proceedings, the official duty statement on file with the department shall be used. The duty statement to be used shall be served upon the applicant together with the notice of the date, time and place of the medical examination. The applicant shall be notified in writing of the findings of the physician, by certified mail addressed to the applicant's address of record.

(2) The applicant, if certified by the examining physician to be fit to perform the duties of the former position, shall be reinstated or placed on a preferred list in accord with *section 71 of the Civil Service Law*.

(3) Any applicant medically examined pursuant to paragraph (1) of this subdivision and certified not to be fit to perform the duties of the former position, may apply in writing for a hearing, to the President of the Civil Service Commission, acting as the head of the Department of Civil Service. Such application shall be made within 10 working days from the date of service of the notice of an adverse medical finding. The hearing shall be held before a hearing officer who, except as specified herein, shall be appointed and shall conduct the proceedings in accord with article 3 of the State Administrative Procedure Act. The applicant may be represented or assisted by an attorney or by a representative of the labor organization, if any, certified or recognized to represent the bargaining unit to which the position to which the applicant seeks reinstatement is assigned. The hearing officer shall receive documents and testimony as well as written and oral argument on the issues of the medical condition of the applicant, the duties of the position, and the ability of the applicant to perform those duties, and shall submit the record of the proceeding, with recommendations, to the President of the Civil Service Commission, acting as the head of the Department of Civil Service.

(4) The President of the Civil Service Commission, acting as the head of the Department of Civil Service, shall issue a written finding of facts and determination either directing or denying the reinstatement or placement upon a preferred list of the applicant in accord with *section 71 of the Civil Service Law*. The determination of the President of the Civil Service Commission shall be based on

4 NYCRR § 5.9

the record as a whole, assembled by the hearing officer. It shall be subject to review by the Civil Service Commission, upon written application by a party aggrieved within 30 days of service of the determination, pursuant to subdivision 5 of *section 6 of the Civil Service Law*, on the issue of manifest error only, and solely upon the record of the proceeding before the President. The decision of the commission shall be final, subject only to judicial review pursuant to article 78 of the Civil Practice Law and Rules.

(5) The Department of Civil Service shall not be required to entertain more than one application for reinstatement hereunder from any applicant during any six-month period.

Section statutory authority: Civil Practice Law & Rules, §§ A78, 6, 71: State Administrative Procedure Act, § A3

Statutory authority: *Civil Service Law*, § 6

Added 5.9 on 11/21/89; amended 5.9 on 4/01/92.