

SECTION 75 DISCIPLINARY PROCEDURES FOR CIVIL SERVANTS

☐ WHO IS COVERED?

- Competitive class employees who are “permanent” – *i.e.*, have successfully completed their probationary appointment.
- Non-competitive class employees who have completed five continuous years of service.
- Honorably discharged war veterans.
- Exempt volunteer firefighters.

☐ WHO IS NOT COVERED?

- Labor class employees.
- Probationary employees.
- Provisional employees.

INTERROGATION

☐ CAN A COVERED EMPLOYEE BE QUESTIONED?

- Yes, but the employee has certain rights to union representation at the time of questioning under Section 75 itself and the Taylor Law. Similar rights are known in the private sector as Weingarten rights.
- It is an improper practice under the Taylor Law “for a public employer or its agents deliberately . . . to fail to permit or to refuse to afford a public employee the right, upon the employee’s demand, to representation by a representative of the employee organization, or the designee of such organization, which has been certified or recognized under [the Taylor Law], when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action.” Civil Service Law §209-a(1)(g).
- Under Section 75, if, at the time of questioning, the employee appears to be a potential subject of disciplinary action, the employee has a right to union representation and “shall be notified in advance, in writing, of such right.”

If the employee requests union representation, “a reasonable period of time shall be afforded to obtain such representation.”

If the employee is unable to obtain union representation within a reasonable time, the employer has the right to question the employee regardless of the lack of representation.

- ❑ CAN AN EMPLOYEE BE QUESTIONED IF THE ANSWERS MIGHT BE INCRIMINATING?
 - Yes, employees may be asked job-related questions.
 - If the employee believes the answer would be incriminating, he/she can raise the constitutional privilege against self-incrimination.
 - If he/she is then ordered to answer under threat of discipline for failure to answer, the employee then can: (1) refuse to answer, in which case he/she may be subject to discipline for insubordination; or (2) answer, in which case his or her answer can be used against him or her in a disciplinary or civil proceeding, but cannot be used against the employee in a criminal proceeding. This is called use immunity.

PROCEDURES

- ❑ CAN A COVERED EMPLOYEE BE SUSPENDED?
 - Yes, a covered employee can be suspended without pay for up to thirty days.
 - The suspension without pay may continue if the employee asks for adjournment or otherwise causes the hearing to be delayed beyond the thirty days.
- ❑ WHAT ARE THE PROCEDURES FOR INITIATION OF §75 CHARGES?
 - The employee must have written notice of the proposed discipline and the reasons therefore.
 - The employee must be furnished a copy of the charges.
 - The discipline must be based on acts alleged in the charges.
 - A bill of particulars may be used to obtain specificity of charges.
 - The employee has eight days to answer the charges in writing.
 - The statute of limitations on the charges is eighteen months, except where the alleged act(s) would constitute a crime.
- ❑ WHAT ARE THE §75 HEARING PROCEDURES?
 - A record must be made of the hearing.
 - A copy of the record must be provided, upon request, to the employee without charge.
 - The employee is entitled, upon request, to representation by counsel or union representative.
 - The employee is entitled to call witnesses.
 - The burden of proof is on the employer.

- Compliance with the technical rules of evidence is not required.
- The employee can request a public hearing.
- The employee's personnel file is admissible with respect to the penalty determination and sometimes is submitted in a separate "penalty phase" of the hearing.

☐ WHO IS THE HEARING OFFICER?

- The employer selects the hearing officer.
- The officer or body having the power to remove the employee can hold the hearing.
- More often, however, a deputy or other person designated by such officer or body holds the hearing.
- Such designation must be in writing by the school board or other employing entity; absent such written designation, the hearing officer has no jurisdiction.
- Claims of hearing officer bias or partiality are unlikely to be successful.

DETERMINATION

☐ WHO MAKES THE FINAL DECISION?

- The employing officer or body makes the final decision.
- The designated hearing officer makes recommendations only.
- The officer or body can adopt, modify or reject the hearing officer's recommendations.
- The officer or body should base its decision on its review of the record and the hearing officer's recommendations.
- Written notice of the determination must be served upon the employee either personally or by registered mail.
- No employer may take disciplinary action against an employee under Section 75 because that employee engages in "whistle-blowing" about improper actions by government or government employees.
- Off-duty conduct can be the subject of a Section 75 proceeding.

☐ WHAT PENALTIES CAN BE IMPOSED?

- Section 75 provides for a choice from five enumerated penalties.
- The penalty imposed should be one of the enumerated penalties and should not consist of multiple or additional penalties.
- The penalties are as follows:
 - Reprimand.
 - Fine, not to exceed one hundred dollars (\$100.00).
 - Suspension without pay, not exceeding two months (time served without pay can be considered as part of the penalty).
 - Demotion in grade or title.

- Dismissal from service.

APPEAL

❑ WHAT APPEALS CAN BE MADE?

- An employee can appeal either to the civil service commission having jurisdiction or to court, but not both.
- An application to the civil service commission must be made in writing within 20 days after service of the written notice of the determination.
- An application to court must be made under Article 78 of the CPLR, which has a four-month statute of limitations, but also may be subject to shorter notice of claim provisions such as those in Education Law § 3813.