

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #24-08

2200 Separations & Leaves

December 2024

TO: Department and Agency Personnel Directors, Human Resources and Affirmative Action Officers

FROM: Eugene Sarfoh, Counsel

SUBJECT: Chapter 306 of the Laws of 2024 – Revisions to Civil Service Law section 72

DATE: December 12, 2024

Chapter 306 of the Laws of 2024 has made substantive changes to Civil Service Law (CSL) Section 72, which governs appointing authorities' determinations to place employees on involuntary leaves of absence for a disability other than a disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law, or when an employee who has been voluntarily on leave due to a personal illness is prevented from returning to work by the appointing authority. (See SPMM Advisory Memorandum #14-01.)

Starting January 1, 2025, an appointing authority that refers an employee for a fitness for duty examination pursuant to CSL section 72 must provide the employee with a copy of any written, electronic or other communications provided by the appointing authority to a medical officer or other entity regarding the claim that such employee is unable to perform the duties of their position. This information must be provided to the employee prior to the conduct of any medical fitness for duty examination. This means that the employee must be provided with the documentation directing the referral to the Department of Civil Service Employee (DCS) Health Service (EHS) or its designees, including the completed EHS medical referral forms and all of the supporting documentation.

For immediate removals from the workplace, when the employee is considered to present a potential danger to persons or property or would severely interfere with operations per CSL section 72(5), the employee must be provided with all documentation prior to any EHS examination or lab testing. Where practicable, the employee can be provided such documentation contemporaneous with removal from the workplace. Where this is not possible, in all cases the **appointing authority must provide all documents** prior to the EHS examination or lab testing.

Chapter 306 also provides that this information must be transmitted to the DCS and the "authorized representative" of such employee. As before, receipt of the fitness for duty referral forms and supporting records by EHS constitutes notice to DCS. However, this confidential medical information should not be given to the employee's union, a union representative (such as an agency or facility union representative), the Organization of Management Confidential Employees (OMCE), a co-worker, an attorney, family member or any other purported "authorized representative" without a newly signed authorization from the employee. Appointing authorities should have employees use the attached Authorization Form for this purpose.

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If an employee is placed on leave pursuant to CSL section 72, the employee must be provided with a written statement of the reasons therefor and complete copies of all of the documentation, reports and records relied upon by EHS during the fitness for duty examination[s], including any documents, reports and correspondence sent to the appointing authority at the conclusion of the medical examination. Since EHS may not be aware that an employee has been placed on CSL section 72 medical leave following an examination, the appointing authority must advise EHS that the employee has been placed on leave so that the medical records can be forwarded to the employee by regular, registered or certified mail. Employers must provide a current and correct mailing address for the employee along with the notification of imposed leave sent to EHS. EHS must provide this medical information to the employee even if the employee does not appeal the decision to be placed on CSL section 72 leave.

Any questions regarding these requirements should be directed to Counsel's Office at the Department of Civil Service.

Attachment: Authorization Form



**Department of
Civil Service**

EMPLOYEE HEALTH SERVICE

AUTHORIZATION TO RELEASE CIVIL SERVICE LAW SECTION 72
FITNESS FOR DUTY REFERRAL RECORDS TO AN AUTHORIZED
REPRESENTATIVE

EHS-987

**THIS FORM SHOULD BE SUBMITTED ONLY TO YOUR EMPLOYER
DO NOT SUBMIT THIS FORM TO THE EMPLOYEE HEALTH SERVICE**

I hereby authorize my appointing authority, (name of appointing authority) _____
to release copies of the employer's request to the New York State Employee Department of Civil Service Health Service
(EHS) or EHS-designated provider that I undergo a fitness for duty examination pursuant to Civil Service Law section 72,
along with any written, electronic or other communications regarding the claim that I am unable to perform my duties, to
the Authorized Representative named by me, below.

Name and Title of Authorized Representative: _____

Address of Authorized Representative: _____

E-Mail Address of Authorized Representative: _____

Telephone Number of Authorized Representative: _____

Fax Number of Authorized Representative: _____

(Provide as much information as possible.)

I understand that if I do not designate an Authorized Representative and sign and date this Form, no information or
records regarding the fitness for duty examination request will be shared by my appointing authority pursuant to Civil
Service Law section 72 with any third parties, except as otherwise required by law.

I understand that this Authorization applies only to the appointing authority's current request that I undergo a fitness for
duty examination. Any future fitness for duty examinations will require completion of a new Authorization form.

Please print out, sign, and date this form.

Signature of Employee

Print Name

Date

PERSONAL PRIVACY PROTECTION LAW NOTIFICATION

The information which you are providing on this application is being requested pursuant to Section 72 of the New
York State Civil Service Law for the principal purpose of identifying the Authorized Representative designated to
receive the records described herein. This information will be used in accordance with Section 96(1) of the
Personal Privacy Protection Law (PPPL), particularly subdivisions (a), (e) and (f). Failure to provide this
information may prevent release of the subject records. This information will be maintained by the Personnel
Office of the agency where you submit this Authorization. For further information, relating only to the PPPL, call
(518) 457- 9375.