

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #09-04**

2200 Separations and Leaves

December 2009

THIS ADVISORY MEMORANDUM SUPPLEMENTS POLICY BULLETIN 93-02 IN SECTION 2200, SEPARATIONS AND LEAVES. PLEASE FILE THIS MEMORANDUM WITH POLICY BULLETIN 93-02. NOTE THAT THE "SAMPLE NOTICE OF PENDING TERMINATION" (PAGE 9) SHOULD BE AMENDED TO INCLUDE THE LANGUAGE BELOW. FOR REFERENCE, A NEW "SAMPLE NOTICE OF PENDING TERMINATION" APPEARS ON PAGE 2 OF THIS ADVISORY MEMORANDUM.

Section 5.9 of 4 NYCRR (Rules for the Classified Service) requires that appointing authorities provide 30 days notice of proposed termination to employees facing dismissal under §71 of the CSL.

An appointing authority recently asked this question: if an employee so notified of ensuing termination returned to work briefly, and then was absent *due to the same disabling condition*, would the appointing authority be required to provide another 30-days notice of termination? **The answer is "NO, not if the absence occurs within 30 days of the restoration to service."**

Section 5.9(c) requires that termination from service shall not be effective until 30 days from service upon the employee of a notice of impending termination containing a proposed effective date for termination. This section does not require a new notice after a short-lived return to work as long as the employee is initially notified how the effective termination date is determined if the employee is again absent and exhausts all leave within 30 days of restoration to service.

The initial letter of termination should notify employees that if a return to duty is short-lived and the employee again goes out on leave for the same occupational injury or disease, termination will ensue without any additional notice as soon as any remaining leave is exhausted. Employers should also notify any employee restored to service of the amount of remaining leave, if any, so the employee is aware in advance of the effective date for termination if absence recurs within 30 days of restoration. Counsel advises that this language should be used in the Notice of Pending Termination:

If restored to duty, you will be informed of any remaining worker's compensation leave and if you return to workers' compensation leave for the same occupational injury or disease WITHIN 30 DAYS OF RESTORATION, you may be immediately terminated without further notice when your cumulative year of leave has been exhausted.

A complete "Sample Notice of Pending Termination" appears on the next page.

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Sample Notice of Pending Termination

(to be sent at least 30 and no more than 60 days prior to the proposed termination date)

Dear _____:

Pursuant to §71 of the New York State Civil Service Law and §5.9 of the Rules for the Classified Service, your workers' compensation leave will end, and your employment will terminate on [DATE] due to ____ [REASON: E.G. FINDING OF PERMANENT DISABILITY/COMPLETION OF ONE CUMULATIVE YEAR OF LEAVE/ETC.]____.

You have the right to apply to this office prior to that date for restoration to duty if you are medically fit to perform the duties of your position. If you apply, you may be required to submit to a medical examination to determine your fitness. If the examining physician finds that you are not fit, you will have the right to a hearing to contest that finding, pursuant to Subdivision (d) of §5.9 of the Rules for the Classified Service. If you are found fit for duty by this agency, your leave will be terminated and you will be scheduled to return to work. If restored to duty, you will be informed of any remaining worker's compensation leave and if you return to workers' compensation leave for the same occupational injury or disease WITHIN 30 DAYS OF RESTORATION, you may be immediately terminated without further notice when your cumulative year of leave has been exhausted.

After the termination of your employment, you have the right to apply to the Department of Civil Service within one year of the end of your disability for a medical examination to determine your fitness to return to work. If you are fit to return to work, we will consider you for reinstatement to your position, if vacant, or to a similar position. If you cannot be reinstated at that time, your name will be placed on a preferred list pursuant to §71 of the Civil Service Law and §5.9(e) of the Rules for the Classified Service.

As required by the Americans with Disabilities Act (ADA) and the New York State Human Rights Law (HRL) it is the policy of this agency to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee who has a disability. If you are an individual with a disability as defined by the ADA or HRL you may be entitled to an accommodation to enable you to perform the essential duties of your position. If you believe you would be able to perform the duties of your position with a reasonable accommodation, please contact this office for an application for requesting such an accommodation or for further information about the ADA or HRL.

You may wish to contact the Employees' Retirement System to determine your eligibility for various retirement benefits, including accidental disability retirement. You should do so as soon as possible in order to avoid possible ineligibility due to lateness. You may contact the Retirement System at 1-866-805-0990 or 518-474-7736 (in the Albany area), or by writing to: The New York State Employees' Retirement System, 110 State Street, Albany, NY 12236.

If you have questions regarding this letter, please contact this office at: