

STATE OF NEW YORK

11358

IN ASSEMBLY

September 19, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. L. Rosenthal) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the awarding of punitive damages to persons aggrieved by sexual harassment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph c of subdivision 4 and subdivision 9 of section
2 297 of the executive law, paragraph c of subdivision 4 as amended by
3 chapter 166 of the laws of 2000, subparagraph (vi) of paragraph c of
4 subdivision 4 as amended by section 1 of part AA of chapter 57 of the
5 laws of 2009, subdivision 9 as amended by section 16 of part D of chap-
6 ter 405 of the laws of 1999, are amended to read as follows:

7 c. Within one hundred eighty days after the commencement of such hear-
8 ing, a determination shall be made and an order served as hereinafter
9 provided. If, upon all the evidence at the hearing, the commissioner
10 shall find that a respondent has engaged in any unlawful discriminatory
11 practice as defined in this article, the commissioner shall state find-
12 ings of fact and shall issue and cause to be served on such respondent
13 an order, based on such findings and setting them forth, and including
14 such of the following provisions as in the judgment of the division will
15 effectuate the purposes of this article: (i) requiring such respondent
16 to cease and desist from such unlawful discriminatory practice; (ii)
17 requiring such respondent to take such affirmative action, including
18 (but not limited to) hiring, reinstatement or upgrading of employees,
19 with or without back pay, restoration to membership in any respondent
20 labor organization, admission to or participation in a guidance program,
21 apprenticeship training program, on-the-job training program or other
22 occupational training or retraining program, the extension of full,
23 equal and unsegregated accommodations, advantages, facilities and privi-
24 leges to all persons, granting the credit which was the subject of any
25 complaint, evaluating applicants for membership in a place of accommo-
26 dation without discrimination based on race, creed, color, national
27 origin, sex, disability or marital status, and without retaliation or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 discrimination based on opposition to practices forbidden by this arti-
2 cle or filing a complaint, testifying or assisting in any proceeding
3 under this article; (iii) awarding of compensatory damages to the person
4 aggrieved by such practice; (iv) awarding of punitive damages, in cases
5 of housing discrimination only, in an amount not to exceed ten thousand
6 dollars, to the person aggrieved by such practice; (v) requiring payment
7 to the state of profits obtained by a respondent through the commission
8 of unlawful discriminatory acts described in subdivision three-b of
9 section two hundred ninety-six of this article; ~~and~~ (vi) assessing
10 civil fines and penalties, in an amount not to exceed fifty thousand
11 dollars, to be paid to the state by a respondent found to have committed
12 an unlawful discriminatory act, or not to exceed one hundred thousand
13 dollars to be paid to the state by a respondent found to have committed
14 an unlawful discriminatory act which is found to be willful, wanton or
15 malicious; (vii) requiring a report of the manner of compliance; and
16 (viii) awarding of punitive damages, in cases of sexual harassment only,
17 to the person aggrieved by such practice. If, upon all the evidence, the
18 commissioner shall find that a respondent has not engaged in any such
19 unlawful discriminatory practice, he or she shall state findings of fact
20 and shall issue and cause to be served on the complainant an order based
21 on such findings and setting them forth dismissing the said complaint as
22 to such respondent. A copy of each order issued by the commissioner
23 shall be delivered in all cases to the attorney general, the secretary
24 of state, if he or she has issued a license to the respondent, and such
25 other public officers as the division deems proper, and if any such
26 order issued by the commissioner concerns a regulated creditor, the
27 commissioner shall forward a copy of any such order to the superinten-
28 dent. A copy of any complaint filed against any respondent who has
29 previously entered into a conciliation agreement pursuant to paragraph a
30 of subdivision three of this section or as to whom an order of the divi-
31 sion has previously been entered pursuant to this paragraph shall be
32 delivered to the attorney general, to the secretary of state if he or
33 she has issued a license to the respondent and to such other public
34 officers as the division deems proper, and if any such respondent is a
35 regulated creditor, the commissioner shall forward a copy of any such
36 complaint to the superintendent.

37 9. Any person claiming to be aggrieved by an unlawful discriminatory
38 practice shall have a cause of action in any court of appropriate juris-
39 diction for damages, including, in cases of housing discrimination and
40 sexual harassment only, punitive damages, and such other remedies as may
41 be appropriate, including any civil fines and penalties provided in
42 subdivision four of this section, unless such person had filed a
43 complaint hereunder or with any local commission on human rights, or
44 with the superintendent pursuant to the provisions of section two
45 hundred ninety-six-a of this ~~chapter~~ article, provided that, where the
46 division has dismissed such complaint on the grounds of administrative
47 convenience, on the grounds of untimeliness, or on the grounds that the
48 election of remedies is annulled, such person shall maintain all rights
49 to bring suit as if no complaint had been filed with the division. At
50 any time prior to a hearing before a hearing examiner, a person who has
51 a complaint pending at the division may request that the division
52 dismiss the complaint and annul his or her election of remedies so that
53 the human rights law claim may be pursued in court, and the division
54 may, upon such request, dismiss the complaint on the grounds that such
55 person's election of an administrative remedy is annulled. Notwithstand-
56 ing subdivision (a) of section two hundred four of the civil practice

1 law and rules, if a complaint is so annulled by the division, upon the
2 request of the party bringing such complaint before the division, such
3 party's rights to bring such cause of action before a court of appropri-
4 ate jurisdiction shall be limited by the statute of limitations in
5 effect in such court at the time the complaint was initially filed with
6 the division. Any party to a housing discrimination complaint shall have
7 the right within twenty days following a determination of probable cause
8 pursuant to subdivision two of this section to elect to have an action
9 commenced in a civil court, and an attorney representing the division of
10 human rights will be appointed to present the complaint in court, or,
11 with the consent of the division, the case may be presented by
12 complainant's attorney. A complaint filed by the equal employment oppor-
13 tunity commission to comply with the requirements of 42 USC 2000e-5(c)
14 and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of
15 a complaint within the meaning of this subdivision. No person who has
16 initiated any action in a court of competent jurisdiction or who has an
17 action pending before any administrative agency under any other law of
18 the state based upon an act which would be an unlawful discriminatory
19 practice under this article, may file a complaint with respect to the
20 same grievance under this section or under section two hundred ninety-
21 six-a of this article.

22 § 2. This act shall take effect on the ninetieth day after it shall
23 have become a law.