

# STATE OF NEW YORK

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1243

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

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Introduced by 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-

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

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1 dation without discrimination based on race, creed, color, national  
2 origin, sex, disability or marital status, and without retaliation or  
3 discrimination based on opposition to practices forbidden by this arti-  
4 cle or filing a complaint, testifying or assisting in any proceeding  
5 under this article; (iii) awarding of compensatory damages to the person  
6 aggrieved by such practice; (iv) awarding of punitive damages, in cases  
7 of housing discrimination only, in an amount not to exceed ten thousand  
8 dollars, to the person aggrieved by such practice; (v) requiring payment  
9 to the state of profits obtained by a respondent through the commission  
10 of unlawful discriminatory acts described in subdivision three-b of  
11 section two hundred ninety-six of this article; ~~[and]~~ (vi) assessing  
12 civil fines and penalties, in an amount not to exceed fifty thousand  
13 dollars, to be paid to the state by a respondent found to have committed  
14 an unlawful discriminatory act, or not to exceed one hundred thousand  
15 dollars to be paid to the state by a respondent found to have committed  
16 an unlawful discriminatory act which is found to be willful, wanton or  
17 malicious; (vii) requiring a report of the manner of compliance; and  
18 (viii) awarding of punitive damages, in cases of sexual harassment only,  
19 to the person aggrieved by such practice. If, upon all the evidence, the  
20 commissioner shall find that a respondent has not engaged in any such  
21 unlawful discriminatory practice, he or she shall state findings of fact  
22 and shall issue and cause to be served on the complainant an order based  
23 on such findings and setting them forth dismissing the said complaint as  
24 to such respondent. A copy of each order issued by the commissioner  
25 shall be delivered in all cases to the attorney general, the secretary  
26 of state, if he or she has issued a license to the respondent, and such  
27 other public officers as the division deems proper, and if any such  
28 order issued by the commissioner concerns a regulated creditor, the  
29 commissioner shall forward a copy of any such order to the superinten-  
30 dent. A copy of any complaint filed against any respondent who has  
31 previously entered into a conciliation agreement pursuant to paragraph a  
32 of subdivision three of this section or as to whom an order of the divi-  
33 sion has previously been entered pursuant to this paragraph shall be  
34 delivered to the attorney general, to the secretary of state if he or  
35 she has issued a license to the respondent and to such other public  
36 officers as the division deems proper, and if any such respondent is a  
37 regulated creditor, the commissioner shall forward a copy of any such  
38 complaint to the superintendent.

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

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

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