

STATE OF NEW YORK

1788

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

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 160 of the laws of 2019 and subdivision 9 as amended by chapter
4 140 of the laws of 2022, are amended to read as follows:

5 c. Within one hundred eighty days after the commencement of such hear-
6 ing, a determination shall be made and an order served as hereinafter
7 provided. If, upon all the evidence at the hearing, the commissioner
8 shall find that a respondent has engaged in any unlawful discriminatory
9 practice as defined in this article, the commissioner shall state find-
10 ings of fact and shall issue and cause to be served on such respondent
11 an order, based on such findings and setting them forth, and including
12 such of the following provisions as in the judgment of the division will
13 effectuate the purposes of this article: (i) requiring such respondent
14 to cease and desist from such unlawful discriminatory practice; (ii)
15 requiring such respondent to take such affirmative action, including
16 (but not limited to) hiring, reinstatement or upgrading of employees,
17 with or without back pay, restoration to membership in any respondent
18 labor organization, admission to or participation in a guidance program,
19 apprenticeship training program, on-the-job training program or other
20 occupational training or retraining program, the extension of full,
21 equal and unsegregated accommodations, advantages, facilities and privi-
22 leges to all persons, granting the credit which was the subject of any
23 complaint, evaluating applicants for membership in a place of accommo-
24 dation without discrimination based on race, creed, color, national
25 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 employment discrimination related to private employers, and, in cases
6 of housing discrimination, with damages in housing discrimination cases
7 in an amount not to exceed ten thousand dollars, to the person aggrieved
8 by such practice; (v) requiring payment to the state of profits obtained
9 by a respondent through the commission of unlawful discriminatory acts
10 described in subdivision three-b of section two hundred ninety-six of
11 this article; ~~[and]~~ (vi) assessing civil fines and penalties, in an
12 amount not to exceed fifty thousand dollars, to be paid to the state by
13 a respondent found to have committed an unlawful discriminatory act, or
14 not to exceed one hundred thousand dollars to be paid to the state by a
15 respondent found to have committed an unlawful discriminatory act which
16 is found to be willful, wanton or malicious; (vii) requiring a report of
17 the manner of compliance; and (viii) awarding of punitive damages, in
18 cases of sexual harassment only, to the person aggrieved by such prac-
19 tice. If, upon all the evidence, the commissioner shall find that a
20 respondent has not engaged in any such unlawful discriminatory practice,
21 he or she shall state findings of fact and shall issue and cause to be
22 served on the complainant an order based on such findings and setting
23 them forth dismissing the said complaint as to such respondent. A copy
24 of each order issued by the commissioner shall be delivered in all cases
25 to the attorney general, the secretary of state, if he or she has issued
26 a license to the respondent, and such other public officers as the divi-
27 sion deems proper, and if any such order issued by the commissioner
28 concerns a regulated creditor, the commissioner shall forward a copy of
29 any such order to the superintendent. A copy of any complaint filed
30 against any respondent who has previously entered into a conciliation
31 agreement pursuant to paragraph a of subdivision three of this section
32 or as to whom an order of the division has previously been entered
33 pursuant to this paragraph shall be delivered to the attorney general,
34 to the secretary of state if he or she has issued a license to the
35 respondent and to such other public officers as the division deems prop-
36 er, and if any such respondent is a regulated creditor, the commissioner
37 shall forward a copy of any such complaint to the superintendent.

38 9. Any person claiming to be aggrieved by an unlawful discriminatory
39 practice shall have a cause of action in any court of appropriate juris-
40 diction for damages, including, in cases of employment discrimination
41 related to private employers and housing discrimination and sexual
42 harassment only, punitive damages, and such other remedies as may be
43 appropriate, including any civil fines and penalties provided in subdivi-
44 sion four of this section, unless such person had filed a complaint
45 hereunder or with any local commission on human rights, or with the
46 superintendent pursuant to the provisions of section two hundred nine-
47 ty-six-a of this article, provided that, where the division has
48 dismissed such complaint on the grounds of administrative convenience,
49 on the grounds of untimeliness, or on the grounds that the election of
50 remedies is annulled, such person shall maintain all rights to bring
51 suit as if no complaint had been filed with the division. At any time
52 prior to a hearing before a hearing examiner, a person who has a
53 complaint pending at the division may request that the division dismiss
54 the complaint and annul his or her election of remedies so that the
55 human rights law claim may be pursued in court, and the division may,
56 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. In cases of housing discrimination only, a person
24 whose complaint has been dismissed by the division after investigation
25 for lack of jurisdiction or lack of probable cause may file the same
26 cause of action in a court of appropriate jurisdiction pursuant to this
27 section, unless judicial review of such dismissal has been sought pursu-
28 ant to section two hundred ninety-eight of this article. The attorney
29 general shall have the power to commence an action or proceeding in the
30 supreme court of the state of New York, if, upon information or belief,
31 the attorney general is of the opinion that an employer has been, is, or
32 is about to violate the provisions regarding unlawful discriminatory
33 retaliation pursuant to subdivision seven of section two hundred nine-
34 ty-six of this article. Nothing in this section shall in any way limit
35 rights or remedies which are otherwise available under law to the attor-
36 ney general or any other person authorized to bring an action under this
37 section.

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