STATE OF NEW YORK

2865--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 27, 2023

Introduced by M. of A. SEAWRIGHT, ROZIC, TAYLOR, STECK, SIMON, EPSTEIN, CRUZ, GALLAGHER, SHRESTHA, RAJKUMAR, WEPRIN -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules and the executive law, in relation to jury awards for unlawful discriminatory practices relating to employment

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

Section 1. Subdivision (a) of rule 4404 of the civil practice law and rules, such rule as renumbered by chapter 315 of the laws of 1962, is amended to read as follows:

(a) Motion after trial where jury required. After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court. **No court shall order a new trial on the ground that the jury award was excessive, or otherwise act to reduce the jury's award in a case involving an unlawful discriminatory practice under section two hundred ninety-six of the executive law relating to employment, including a claim by a non-employee under section two hundred ninety-six-d of the executive law, or under any analogous local or municipal human rights law, if applicable, without fully satisfying the pertinent standards set forth in paragraph two of subdivision (c) of section fifty-five hundred one of this chapter and paragraph (b) of**

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

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subdivision nine of section two hundred ninety-seven of the executive law.

§ 2. Subdivision (c) of section 5501 of the civil practice law and rules, as amended by chapter 474 of the laws of 1997, is amended to read as follows:

(c) Appellate division. **1.** The appellate division shall review questions of law and questions of fact on an appeal from a judgment or order of a court of original instance and on an appeal from an order of the supreme court, a county court or an appellate term determining an appeal. The notice of appeal from an order directing summary judgment, or directing judgment on a motion addressed to the pleadings, shall be deemed to specify a judgment upon said order entered after service of the notice of appeal and before entry of the order of the appellate court upon such appeal, without however affecting the taxation of costs upon the appeal. In reviewing a money judgment in an action in which an itemized verdict is required by rule forty-one hundred eleven of this chapter in which it is contended that the award is excessive or inadequate and that a new trial should have been granted unless a stipulation is entered to a different award, the appellate division shall determine that an award is excessive or inadequate if it deviates materially from what would be reasonable compensation**.**

2. Where an award is made by a jury for any damages in a case involving an unlawful discriminatory practice under section two hundred ninety-six of the executive law relating to employment, or under any analogous local or municipal human rights law, including a claim by a non-employee under section two hundred ninety-six-d of the executive law, the jury's verdict is presumed to be correct. Any such jury award shall not be disturbed unless the court finds, reviewing the evidence in the light most favorable to sustaining the verdict, exceptional circumstances which compel the conclusion that (i) the jury was influenced by partiality, prejudice, mistake or corruption, and (ii) remittitur or additur is necessary to avoid a complete miscarriage of justice. In making such determination, the court shall give primary weight to the remedial purpose of the law, and shall not limit any award by using any characterizations of other damage awards. In any such case, the court shall not be bound by any precedent which utilized the concept of material deviation from what would be reasonable compensation, or a judge's personal knowledge or experiences from prior cases.

§ 3. Subdivision 9 of section 297 of the executive law, as amended by chapter 140 of the laws of 2022, is amended to read as follows:

9. **(a)** Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including, in cases of employment discrimination related to private employers and housing discrimination only, punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this article, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and annul his or her

election of remedies so that the human rights law claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint before the division, such party's rights to bring such cause of action before a court of appropriate jurisdiction shall be limited by the statute of limitations in effect in such court at the time the complaint was initially filed with the division. Any party to a housing discrimination complaint shall have the right within twenty days following a determination of probable cause pursuant to subdivision two of this section to elect to have an action commenced in a civil court, and an attorney representing the division of human rights will be appointed to present the complaint in court, or, with the consent of the division, the case may be presented by complainant's attorney. A complaint filed by the equal employment opportunity commission to comply with the requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of a complaint within the meaning of this subdivision. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section or under section two hundred ninety-six-a of this article. In cases of housing discrimination only, a person whose complaint has been dismissed by the division after investigation for lack of jurisdiction or lack of probable cause may file the same cause of action in a court of appropriate jurisdiction pursuant to this section, unless judicial review of such dismissal has been sought pursuant to section two hundred ninety-eight of this article. The attorney general shall have the power to commence an action or proceeding in the supreme court of the state of New York, if, upon information or belief, the attorney general is of the opinion that an employer has been, is, or is about to violate the provisions regarding unlawful discriminatory retaliation pursuant to subdivision seven of section two hundred ninety-six of this article. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

(b) A verdict involving an unlawful discriminatory practice under section two hundred ninety-six of this article relating to employment, including a claim by a non-employee under section two hundred ninety-six-d of this article, or under any analogous local or human rights law, if applicable, shall not be subject to remittitur or additur, or granting of a motion for new trial on the ground that the verdict was excessive or inadequate, or otherwise reduced or increased, unless the court finds, reviewing the evidence in the light most favorable to sustaining the verdict, exceptional circumstances which compel the conclusion that (i) the jury was influenced by partiality, prejudice, mistake or corruption and (ii) that remittitur or additur is necessary to avoid a complete miscarriage of justice. In making such determination, the court shall give primary weight to the remedial purpose of the law, and shall not limit any award by using any characterizations of other damage awards. In any such case, the court shall not be bound by any precedent which utilized the concept of material deviation from what would be reasonable compensation. This provision is substantive in nature, as

opposed to procedural, and shall be so applied in any employment discrimination action under this article, regardless of forum.

§ 4. This act shall take effect immediately and shall apply to all pending cases where a verdict has not yet been reached as of such effective date, as well as all claims filed on or after such effective date.