

# STATE OF NEW YORK

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17--A

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

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Introduced by Sens. GOUNARDES, GIANARIS, GONZALEZ, HOYLMAN-SIGAL, MYRIE, RAMOS, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

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

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section fifty-five hundred one of this chapter and paragraph (b) of 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

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

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

1 reasonable compensation. This provision is substantive in nature, as  
2 opposed to procedural, and shall be so applied in any employment  
3 discrimination action under this article, regardless of forum.

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