STATE OF NEW YORK

920

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. COONEY, PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to requiring additional notice prior to commencing an action in certain discrimination cases

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

Section 1. 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

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

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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. Notwithstanding paragraph a of this subdivision, prior to commencing an action in any court of competent jurisdiction alleging that the contents of a website or mobile application that describes goods and services provided at a place of public accommodation, resort or amusement constitute an unlawful discriminatory practice with respect to visually and hearing impaired individuals, the claimant shall serve written notice upon the owner of such place of public accommodation, resort or amusement by both certified mail, return receipt requested and first class mail that (i) describes each and every feature of such website and/or mobile application alleged to constitute an unlawful discriminatory practice and (ii) provides such owner with an opportunity to correct such alleged violation or violations within sixty days from service of such notice.

c. Within the sixty-day period of time described in subdivision b of this section, the owner of a place of public accommodation, resort or amusement may advise the claimant by written notice by both certified mail, return receipt requested and first class mail that the alleged violation or violations have either been corrected or did not occur and do not need correction.

§ 2. This act shall take effect immediately.