



Division of Human Rights

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GUIDANCE ON THE AWARD OF ATTORNEY'S FEES IN CERTAIN CASES BROUGHT UNDER THE HUMAN RIGHTS LAW

STATUTORY PROVISIONS

The New York Human Right Law provides for the award of attorney's fees, although only in certain types of cases. Pursuant to Human Rights Law § 297.10 (codified as N.Y. Executive Law, Article 15), attorney's fees may be awarded in all cases of *housing discrimination* and *housing-related credit discrimination*.

In addition, attorney's fees may also be awarded in cases of *employment discrimination* or *credit discrimination* where *sex* is the basis for such discrimination. (This was added by amendment to Section 297.10, by the Laws of 2015, chapter 364, effective January 19, 2016, for an action commenced on or after that date.)

The Human Rights Law applies to both public and privately-owned housing. Those who can be liable for unlawful discrimination include the "owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof" (§ 296.5(a); § 296.2(a)) and real estate professionals, including any "real estate broker, real estate salesperson or employee or agent thereof" (§ 296.5(c)).

The Human Rights Law applies generally to employers with four or more employees. Workplace sexual harassment, however, is unlawful by employers of any size, including those with fewer than four employees (§ 292.5). Also, all domestic workers are protected from sexual harassment and harassment based on gender, race religion or national origin, regardless of the number of other employees (§ 296-b). Unpaid interns are protected from workplace discrimination, including sex discrimination and sexual harassment (§ 296-c).

THIS GUIDANCE

This Guidance is intended to fulfill the requirement of the Laws of 2015, chapter 362, directing that the Department of Labor and the Division of Human Rights

shall make training available to assist employers in developing training, policies and procedures to address discrimination and harassment in the workplace including, but not limited to issues relating to pregnancy, familial status, pay equity and sexual harassment. Such training shall take into account the needs of

employers of various sizes. The department and division shall make such training available through, including but not limited to, online means. In developing such training materials, the department and division shall afford the public an opportunity to submit comments on such training.

This Guidance is available on the Division of Human Rights website, www.dhr.ny.gov, or by calling the Division at 888-392-3644, and on the Department of Labor's website, www.labor.ny.gov, or by calling the Department of Labor at 888-469-7365.

IN WHAT TYPE OF CASES CAN ATTORNEY'S FEES BE AWARDED?

Attorney's fees can be awarded pursuant to the Human Rights Law *only* in cases involving:

- ***housing discrimination***: discrimination in public or privately-owned housing is unlawful where the discrimination is based on race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status
- ***housing-related credit discrimination*** (e.g. mortgage loans): housing-related credit discrimination is unlawful where any decision about extending credit, or any disadvantageous term or condition of credit, is made or offered based on race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status
- ***sex discrimination in employment*** where the sex of the applicant, employee or intern is the reason for failure to hire, for termination, for unequal pay, for unequal terms and conditions of work, or other job discrimination, and in all cases of workplace sexual harassment
- ***sexual harassment*** even if the employer has fewer than four employees
- ***sexual harassment*** by an employer of a domestic worker, regardless of the number of employees
- ***sexual harassment*** by an employer of an intern, regardless of the number of employees
- ***sex discrimination in credit*** where the sex of the applicant or debtor is the reason for any decision to deny credit, or to offer any disadvantageous term or condition of credit

GENERALLY HOW ARE ATTORNEY'S FEES AWARDED?

Attorney's fees may be awarded to the winning party by the Commissioner of the Division of Human Rights, as part of a final order after an administrative hearing.

Attorney's fees may also be awarded to the winning party by a state court judge, where the complaint has been brought in court.

In either of these situations, the attorney who will receive the fees must present evidence to establish the value of the fees, so that the Commissioner or the state court judge may make a ruling on the amount of fees to be awarded.

Attorney's fees may be awarded by the Commissioner only as part of a final order after a public hearing, and may not be awarded after a finding of no probable cause or after conciliation or settlement of a claim filed with the Division of Human Rights.

In employment and non-housing-related credit only, the award of attorney's fees is limited to those fees attributable to the claims of sex discrimination or sexual harassment (and in appropriate circumstances, retaliation claims that are related to these claims). In other words, work done by an attorney related to claims of discrimination on a basis other than sex will not be compensated in the award.

UNDER WHAT CIRCUMSTANCES CAN ATTORNEY'S FEES BE AWARDED TO A COMPLAINANT?

Generally, attorney's fees will be awarded to a complainant or plaintiff who wins a housing or housing related credit discrimination case or who wins on claims of sex discrimination or sexual harassment in employment or credit, at a hearing or trial.

In cases where more than one entity may be considered an employer under the Human Rights Law (e.g. a temporary employment agency, and the business where the employee is placed), only the entity found to have engaged in discriminatory actions can be liable for the attorney's fees.

UNDER WHAT CIRCUMSTANCES CAN ATTORNEY'S FEES BE AWARDED TO A RESPONDENT OR DEFENDANT?

In some cases, attorney's fees may be awarded to a respondent or defendant who wins a housing or housing related credit discrimination case or who wins against claims of sex discrimination or sexual harassment in employment or credit, at a hearing or trial.

In order to obtain attorney's fees, a respondent or defendant must make a motion requesting fees, and must show that the allegations of the complaint were frivolous. "Frivolous" means that the action was started or continued in bad faith (a) solely to delay resolution of the claim, or to harass or maliciously injure another, or (b) without any reasonable basis in the Human Rights Law, and without any possible good faith argument for an extension, modification or reversal of the existing law or the law's interpretation.