NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
November 2 – 6, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released November 2 – 6, 2026, and Posted on the New York Appellate Digest on Monday, November 16, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report. Copyright 2026 New York Appellate Digest, Inc.

Table of Contents

Contents

ADMINISTRATIVE LAW, MUNICIPAL LAW, REAL PROPERTY LAW. 2

PUSUANT TO THE NYC BUILDING CODE, DEFENDANTS ARE STRICTLY LIABLE FOR DAMAGE TO PLAINTIFFS' REAL PROPERTY CAUSED BY EXCAVATION (SECOND DEPT). .. 2

CIVIL PROCEDURE, HUMAN RIGHTS LAW, ADMINISTRATIVE LAW, MUNICIPAL LAW..... 3

THE STATE AND CITY HUMAN RIGHTS LAW DISCRIMINATION CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED; PLAINTIFF WAS NOT COLLATERALLY ESTOPPED BY A PRIOR FEDERAL LAWSUIT UNDER THE AMERICANS WITH DISABILITIES ACT (ADA); THE FACTS AND ANALYTICAL STANDARDS ARE DIFFERENT (SECOND DEPT). 3

CIVIL PROCEDURE, NEGLIGENCE, TRUSTS AND ESTATES. 4

PLAINTIFF, AS A "PROPOSED ADMINISTRATOR," DID NOT HAVE THE CAPACITY TO BRING A SURVIVAL ACTION ON BEHALF OF DECEDENT'S ESTATE; THE MOTION TO AMEND THE COMPLAINT ACCORDINGLY WAS NOT TIMELY (SECOND DEPT)..... 4

CIVIL RIGHTS LAW, CONSTITUTIONAL LAW, COUNTY LAW, HUMAN RIGHTS LAW..... 5

A COUNTY LAW WHICH PROHIBITS TRANSGENDER ATHLETES FORM PARTICIPATING IN WOMEN'S AND GIRLS' SPORTS AT A COUNTY PARK IS PREEMPTED BY THE NEW YORK STATE HUMAN RIGHTS LAW (NYSHRL) AND THE CIVIL RIGHTS LAW (SECOND DEPT)..... 5

CIVIL SERVICE LAW, EMPLOYMENT LAW. 6

PLAINTIFF'S CLAIM FOR WHISTLEBLOWER RETALIATION BASED UPON THE EMPLOYER'S INACTION IN RESPONSE TO CLAIMANT'S DISCLOSURE OF SAFETY RISKS SHOULD NOT HAVE BEEN DISMISSED (THIRD DEPT). 6

LABOR LAW-CONSTRUCTION LAW. 8

THREE INDUSTRIAL CODE PROVISIONS APPLY TO INJURY CAUSED BY A CIRCULAR SAW OPERATED BY SOMEONE OTHER THAN THE PLAINTIFF; THE LABOR LAW 241(6) CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED (FIRST DEPT). 8

ADMINISTRATIVE LAW, MUNICIPAL LAW, REAL PROPERTY LAW.

PUSUANT TO THE NYC BUILDING CODE, DEFENDANTS ARE STRICTLY LIABLE FOR DAMAGE TO PLAINTIFFS' REAL PROPERTY CAUSED BY EXCAVATION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiffs were entitled to summary judgement on their claim that excavation by the defendants damaged plaintiffs' real property. The NYC Building Code imposes strict liability for damage caused by excavation:

… [T]he plaintiffs demonstrated, prima facie, that [defendants] President and Triborough caused an excavation to be made pursuant to a license granted under New York City Building Code § BC 3309.4 and that the excavation proximately caused damage to the Union Street property … . The plaintiffs' evidence included, among other things, an affidavit from a professional engineer whose investigation on the plaintiffs' behalf concluded that the excavation on the President Street property had caused damage to the Union Street property. Further, the plaintiffs' submissions demonstrated, prima facie, that the Union Street property continued to sustain damages within the statutory period as a result of the ongoing excavation project … DSSR Realty Corp v President SAI II, LLC, 2026 NY Slip Op 06416, Second Dept 11-4-26

Practice Point: The NYC Building Code imposes strict liability for damage to real property caused by excavation.

November 4, 2026

CIVIL PROCEDURE, HUMAN RIGHTS LAW, ADMINISTRATIVE LAW, MUNICIPAL LAW.

THE STATE AND CITY HUMAN RIGHTS LAW DISCRIMINATION CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED; PLAINTIFF WAS NOT COLLATERALLY ESTOPPED BY A PRIOR FEDERAL LAWSUIT UNDER THE AMERICANS WITH DISABILITIES ACT (ADA); THE FACTS AND ANALYTICAL STANDARDS ARE DIFFERENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the wheel-chair-bound plaintiff was not collaterally estopped by a prior federal suit against the same defendants under the Americans with Disabilities Act (ADA). The facts were different and the Human Rights Law was amended to require am more liberal construction of its terms than that required by the ADA:

… [T]he plaintiff is not collaterally estopped from asserting causes of action alleging violations of the NYSHRL and the NYCHRL based on the determinations made in the prior federal action. The federal court determined, inter alia, that the defendants did not discriminate against the plaintiff within the meaning of the ADA by failing to remove existing barriers to accessibility because such removal was not "readily achievable" … . The causes of action alleging violations of the NYSHRL and the NYCHRL, however, involve a different legal threshold and different factual issues than those involved in determining whether the defendants discriminated against the plaintiff within the meaning of the ADA. Under the NYCHRL, which "must be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof," regardless of whether similarly-worded federal laws have been so construed … , a covered entity must establish that the accommodation sought would cause "undue hardship" in the conduct of the entity's business … . Thus, a cause of action asserted pursuant to the NYCHRL must be analyzed independently from similar or identical causes of action asserted pursuant to the ADA … .

Furthermore, although the standards for establishing unlawful discrimination in a place of public accommodation under the NYSHRL previously were the same as those governing cases alleging violations of the ADA … , in 2019, the New York

State Legislature amended the NYSHRL to require that it "be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of [the NYSHRL], have been so construed" … . Irish v Tropical Emerald, LLC, 2026 NY Slip Op 06423, Second Dept 11-4-26

Practice Point: Here the disabled plaintiff was not collaterally estopped from bringing State and City Human Rights Law causes of action by a prior lawsuit alleging discrimination under the Americans with Disabilities Act (ADA) The facts and analytical standards are different.

November 4, 2026

CIVIL PROCEDURE, NEGLIGENCE, TRUSTS AND ESTATES.

PLAINTIFF, AS A "PROPOSED ADMINISTRATOR," DID NOT HAVE THE CAPACITY TO BRING A SURVIVAL ACTION ON BEHALF OF DECEDENT'S ESTATE; THE MOTION TO AMEND THE COMPLAINT ACCORDINGLY WAS NOT TIMELY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff, as a "proposes administrator" did not have capacity to bring a survival action on behalf of the decedent's estate. Only an administrator has such capacity:

The plaintiff's motion, among other things, for leave to amend the complaint to substitute herself as "Administratrix" of the decedent's estate in place of "proposed Administratrix" should have been denied. Here, the plaintiff failed to seek substitution within a reasonable time … .

"A personal representative who has received letters of administration of a decedent's estate is the only party who is authorized to commence a survival action to recover damages for personal injuries sustained by the decedent or a wrongful death action to recover damages sustained by the decedent's distributees on account of his or her death" … . "Thus, a 'proposed administrator' who has not obtained letters of administration lacks capacity to bring an action to recover damages for personal injuries or wrongful death on behalf of a decedent's estate"

… . Accordingly, dismissal is proper pursuant to CPLR 3211(a)(3) where, as here, an action is commenced prior to the plaintiff receiving letters of administration … . As the plaintiff makes no allegations in support of any claim brought in her individual capacity, the Supreme Court should have directed dismissal of the complaint. Perez v Levister Redevelopment Co., LLC, 2026 NY Slip Op 06473, Second Dept 11-4-26

Practice Point: Only a party who has obtained letters of administration can bring a survival action on behalf of a decedent's estate. Here the plaintiff's action brought as a "proposed administrator" was dismissed.

November 4, 2026

CIVIL RIGHTS LAW, CONSTITUTIONAL LAW, COUNTY LAW, HUMAN RIGHTS LAW.

A COUNTY LAW WHICH PROHIBITS TRANSGENDER ATHLETES FORM PARTICIPATING IN WOMEN'S AND GIRLS' SPORTS AT A COUNTY PARK IS PREEMPTED BY THE NEW YORK STATE HUMAN RIGHTS LAW (NYSHRL) AND THE CIVIL RIGHTS LAW (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the county law which prohibited transgender athletes from participating in women's and girls' sports at a county park was unconstitutional. The local law was called "A Local Law to Maintain a Safe and Fair Competitive Environment for Woman and Girls Participating in Sports and Athletic Events:"

Civil Rights Law § 40-c(2) provides that "[n]o person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation, gender identity or expression, or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.". * * *

"Discrimination on the basis of gender identity or expression is also sex discrimination" (9 NYCRR 466.13[d]). "Gender identity or expression means a person's actual or perceived gender-related identity, appearance, behavior, expression or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender" … . "A transgender person is an individual who has a gender identity or expression different from the sex assigned to that individual at birth" … .

Here, the NYSHRL and Civil Rights Law § 40-c expressly prohibit the County from restricting access to places of public accommodation based on a person's gender identity or expression, including whether the person identifies as transgender. Thus, the local law's permitting scheme conflicts with, and is invalid as preempted by, the NYSHRL and Civil Rights Law § 40-c … . Long Is. Roller Rebels v County of Nassau, 2026 NY Slip Op 06427, Second Dept 11-4-26

Practice Point: A county law prohibiting transgender athletes from participating in women's and girls' sports at a county park is preempted by the NYS Human Rights Law and the Civil Rights Law.

Same analysis and result in a declaratory judgment action entitled People v County of Nassau, 2026 NY Slip Op 06472, Second Dept 11-4-26.

November 4, 2026

CIVIL SERVICE LAW, EMPLOYMENT LAW.

PLAINTIFF'S CLAIM FOR WHISTLEBLOWER RETALIATION BASED UPON THE EMPLOYER'S INACTION IN RESPONSE TO CLAIMANT'S DISCLOSURE OF SAFETY RISKS SHOULD NOT HAVE BEEN DISMISSED (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Mackey, reversing (modifying) Supreme Court, determined plaintiff had stated a claim for whistleblower retaliation:

In support of her whistleblower claim, claimant alleged that her employment was terminated in retaliation for raising safety concerns regarding the condition of

certain abandoned steam tunnels. According to claimant, engineering studies from 2012 and 2017 revealed that the tunnels were in disrepair and that there could be "catastrophic results" in the event of a significant weather event. Thereafter, between 2017 and June 2020 claimant repeatedly attempted to inform defendant of her concerns and to devise a plan to mitigate the potential risk posed by the steam tunnels, but her efforts were dismissed. In addition to drafting a memorandum, claimant avers that she continued to raise her concerns with the then-deputy secretary for economic development "every other week" over the course of "many months," but that no action was taken. Claimant alleged that she was terminated in retaliation for her persistent efforts to call attention to, as she believed, this public safety issue. In turn, she argues that defendant's failure to take action in response to the safety issue alleged amounted to criminal nuisance in the second degree, arguing that defendant knowingly and recklessly maintained a dangerous condition (see Penal Law § 240.45 [1]).

… [W]e find that claimant's allegations concerning defendant's inaction with respect to the steam tunnels are sufficient to support a retaliation claim under Civil Service Law § 75-b. * * *

… [Plaiintiff] sufficiently alleged that defendant's inaction in response to claimant's disclosure of a potential safety risk constituted a violation of law, resulting in a substantial and specific danger to public health or safety, and that her persistent disclosure of her concerns in this regard resulted in her termination (see Civil Service Law § 75-b [2] [a]). Rosenthal v State of New York, 2026 NY Slip Op 06504, Third Dept 11-5-26

Practice Point: Consult this decision for insight into the sufficiency of a claim for whistleblower retaliation based upon the employer's inaction in response to claimant's disclosure of safety risks.

November 5, 2026

LABOR LAW-CONSTRUCTION LAW.

THREE INDUSTRIAL CODE PROVISIONS APPLY TO INJURY CAUSED BY A CIRCULAR SAW OPERATED BY SOMEONE OTHER THAN THE PLAINTIFF; THE LABOR LAW 241(6) CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined certain provisions of the Industrial Code applied to a circular saw. Plaintiff was injured by the saw as it was operated by someone else. Industrial Code sections 23-1.12(c) apples to that scenario. Also Industrial Code sections 23-9.2(a) and 23-1.5(c)(3) apply to a circular saw which does not have a proper cover for the blade. Therefore the Labor Law 241(6) causes of action should not have been dismissed:

Plaintiff, who alleges that he was injured when the circular saw being operated by his co-worker cut plaintiff's finger, correctly argues that his Labor Law § 241 (6) claim based on Industrial Code § 23-1.12(c)(1) is not barred simply because he was not the operator of the saw … . Moreover, plaintiff raised an issue of fact as to whether defendants violated the second clause of that Industrial Code section. That clause, which does not refer to the operator, requires that saws like the one at issue have "a movable self-adjusting guard below the base plate which will completely cover the saw blade to the depth of the teeth when such saw blade is removed from the cut." Plaintiff's testimony that he had observed on occasions preceding the accident that the part of the saw that secured the blade would get "stuck," and that the bottom part of the saw did not provide protection from the saw's disk is sufficient to raise an issue of fact.

Plaintiff's testimony further served to create an issue of fact as to the applicability of Industrial Code section 23-1.5(c)(3), which requires that "[a]ll safety devices, safeguards and equipment in use shall be kept sound and operable" … .

Finally, this Court has found that a grinder and miter saw lacking protective guards are the types of power-operated equipment that fall within the purview of Industrial Code § 23-9.2(a) … . That section requires that "[u]pon discovery, any structural defect or unsafe condition in such equipment shall be corrected by necessary

repairs or replacement." Volquez v Wade Hampton Apts., Inc., 2026 NY Slip Op 06548, First Dept 11-5-26

Practice Point: Three Industrial Code provisions apply to injury from a circular saw operated by someone other than the plaintiff.

November 5, 2026

Copyright 2026 New York Appellate Digest, Inc.