COMMITTEE ON SEX & LAW

NATALIE BIRNBAUM
CO-CHAIR
natalierbirnbaum@gmail.com

SUSAN CERSOVSKY
CO-CHAIR
secersovsky@gmail.com

October 10, 2025

The Honorable Kathy Hochul
Governor of New York State
New York State Capitol Building
Albany, NY 12224

Re: Urging Swift Enactment of the Reasonable Accommodation Anti-Retaliation Act (S.3398 / A.4898)

Dear Governor Hochul:

On behalf of the Sex and Law Committee of the New York City Bar Association (the "City Bar"), we write to request that you expeditiously sign S.3398 (Sen. Gounardes) / A.4898 (A.M. Clark) ("the Reasonable Accommodation Anti-Retaliation Act"), legislation we strongly support.

Under the New York State Human Rights Law ("NYSHRL"), New York workers have long enjoyed the right to reasonable accommodation for various reasons, such as pregnancy, disability, religious observance, and domestic violence-related needs, so long as granting the accommodation would not cause an undue hardship to the employer.[1] This right to reasonable accommodation means that a pregnant warehouse worker may request bathroom breaks to avoid developing a urinary tract infection. A domestic violence victim can take reasonable time off work to obtain a restraining order or seek urgent medical care for themself or their child. A worker with cancer has the right to seek an adjusted work schedule, to obtain life-saving treatment.

At least in theory. As it stands, for many New Yorkers, this right to accommodation remains little more than a promise on paper. That is because the NYSHRL does not expressly

[1] N.Y. Exec. L. §§ 296(3)(a), 10, 22(c)(1).

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

prohibit employers from retaliating against employees for seeking such accommodations.[2] Some courts have interpreted that omission to mean that the act of requesting accommodation is not a protected activity under the NYSHRL's retaliation provision.[3] In other words, these courts have concluded, "You have a right to accommodation under the law, but your employer can legally fire you for exercising it." Other courts have pointed out the perverse—and outright "silly"—result of this interpretation of the statute, explaining that it "would permit an employer to fire an employee the moment the employee requested an accommodation—but would forbid the firing if the employee then complained about the requested accommodation being denied."[4]

This gap in protections under New York State law is particularly striking, given that the NYSHRL's federal and city counterparts—the Americans with Disabilities Act and New York City Human Rights Law—prohibit employers from punishing workers for requesting accommodations.[5]

This dangerous loophole has left tens of thousands of New Yorkers vulnerable to being fired for requesting the accommodations they need to stay healthy and safe at work, while navigating pregnancy, domestic violence, and disability. It is a result New York lawmakers could

---

[2] *See* N.Y. Exec. L. § 296(7) (prohibiting retaliation merely for "opposing" a prohibited practice).

[3] *See, e.g.*, *D'Amico v. City of New York*, 73 N.Y.S.3d 540, 541 (App. Div. 2018); *Witchard v. Montefiore Med. Ctr.*, 960 N.Y.S.2d 402, 403 (App. Div. 2013); *McKenzie v. Meridian Cap. Grp.*, LLC, 829 N.Y.S.2d 129, 131 (App. Div. 2006). Some federal courts have indicated they feel bound as a matter of comity to apply the decisions of these state courts (sometimes over their own serious reservations). *See, e.g.*, *Guerrero v. Constellation Health Servs., LLC*, No. 22-CV-07736 (OEM) (LGD), 2025 WL 2549936, at *30 (E.D.N.Y. Sept. 4, 2025) ("Plaintiff's NYSHRL-based retaliation claim must be dismissed as a matter of law because New York intermediate appellate courts held that 'under [NYSHRL], a request for reasonable accommodation is not a protected activity for purposes of a retaliation claim.'"); *Khademi v. Aanika Biosciences, Inc.*, 24-CV-05130 (OEM) (JRC), 2025 WL 1787046, at *11 (E.D.N.Y. June 28, 2025) (same); *Passante v. Cambium Learning Grp.*, 23-CV-4060 (MKB), 2024 WL 4171026, at *10 (E.D.N.Y. Sept. 12, 2024) (same); *Medina v. AAM 15 Mgmt. LLC*, 750 F. Supp. 3d 332, 346 (S.D.N.Y. 2024) (same); *Marshall v. Westchester Med. Ctr. Health Network*, No. 22-CV-7990, 2024 WL 665200, at *14 (S.D.N.Y. Feb. 16, 2024) (same); *Scarville v. Living Res. Corp.*, 1:21-CV-0807 (GTS/CFH), 2022 WL 4365863, at *11 (N.D.N.Y. Sept. 21, 2022) (same); *Taulbee v. D'Youville Coll.*, No. 21-CV-228, 2022 WL 363338, at *2 (W.D.N.Y. Jan. 11, 2022) (same); *Dipinto v. Westchester County*, No. 18-CV-793, 2020 WL 6135902, at *7 (S.D.N.Y. Oct. 19, 2020) (same); *Mejia v. City of New York*, 17-CV-2696 (NGG) (JO), 2020 WL 2837008, at *13 (E.D.N.Y. May 30, 2020) (same); *Piligian v. Ichan Sch. of Med. at Mount Sinai*, No. 17-CV-1975, 2020 WL 6561663, at *11 (S.D.N.Y. Apr. 7, 2020) (same), *report and recommendation adopted sub nom. Piligian v. Icahn Sch. of Med. at Mount Sinai*, 490 F. Supp. 3d 707 (S.D.N.Y. 2020).

[4] *Limauro v. Consol. Edison Co. of New York, Inc.*, No. 20-cv-03558 (CM), 2021 WL 466952, at *11 (S.D.N.Y. Feb. 9, 2021); *see also Soileau v. Guilford of Maine, Inc.*, 105 F.3d 12, 16 (1st Cir. 1997) (observing that "[i]t would seem anomalous . . . to think [the legislature] intended no retaliation protection for employees who request a reasonable accommodation . . . . This would leave employees unprotected if an employer granted the accommodation and shortly thereafter terminated the employee in retaliation.").

[5] *See, e.g.*, *Weixel v. Bd. of Educ. of City of New York*, 287 F.3d 138, 149 (2d Cir. 2002) (holding that accommodation request is protected activity under the ADA); *Solomon v. Vilsack*, 763 F.3d 1, 15 & n.6 (D.C. Cir. 2014) (collecting cases concluding the same); N.Y.C. Admin. Code § 8-107(7)(v) (providing that it is unlawful under the NYCHRL to retaliate against any person who "requested a reasonable accommodation"). New York State law is supposed to *exceed* the floor set by federal law. N.Y. Exec. L. § 300 (directing that the NYSHRL "shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws . . . have been so construed").

never have intended when they passed legislation guaranteeing workers the right to request those accommodations in the first place.

Fortunately, this past legislative session, the Senate and Assembly passed the Reasonable Accommodation Anti-Retaliation Act, S.3398/A.4898. This legislation makes it clear that it is unlawful to retaliate against a worker for requesting a reasonable accommodation.[6] It aligns the NYSHRL with its federal and city analogues, while better achieving the original intent of the legislature to ensure that the right to reasonable accommodation is a meaningful one for all New Yorkers.[7]

The bill is ready for your signature. With each day that passes, your constituents remain vulnerable to being fired simply for seeking what they need to stay healthy and safe in the workplace. For these reasons, the City Bar urges you to sign the Reasonable Accommodation Anti-Retaliation Act, S.3398/A.4898 into law as soon as possible. We are available to speak with you, should you have any questions regarding the legislation. Thank you for your consideration.

Respectfully,

Natalie Birnbaum

Natalie Birnbaum, Co-Chair
Sex & Law Committee

Susan Cersovsky

Susan Cersovsky, Co-Chair
Sex & Law Committee

Dana Bolger

Dana Bolger, Principal Writer
Sex & Law Committee

Cc: Hon. Andrew Gounardes
Hon. Sarah Clark

Contact
Mary Margulis-Ohnuma, Senior Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

[6] Specifically, the legislation provides, "It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because such person has . . . (iii) requested a reasonable accommodation under this article." S.3398 (2025), https://www.nysenate.gov/legislation/bills/2025/S3398.

[7] Sponsor Memo, S.3398 (2025) ("It aligns our state Human Rights Law with its federal and city counterparts while better achieving the original intent of the legislature to ensure that all individuals making requests for accommodations at the job site, in housing, or in places of public accommodation are protected against retaliation from making such requests."); *see also* S.3398 (2025) ("The amendments in this act are declarative of and clarify existing law. This act shall not be construed to mean that the executive law does not already prohibit retaliation for requesting a reasonable accommodation.").