



**MEMORANDUM IN SUPPORT OF THE  
REASONABLE ACCOMMODATION ANTI-RETALIATION ACT  
S8888 (GOUNARDES)/ A10002 (WALLACE)**

NELA/NY writes in strong support of the Reasonable Accommodation Anti-Retaliation Act **S8888/A10002 (2023-2024)**. This important bill makes clear that the New York State Human Rights Law prohibits retaliation against any individual who requests a reasonable accommodation pursuant to the Human Rights Law.

The National Employment Lawyers Association (NELA) is a national organization of attorneys dedicated to the vindication of workers' rights. NELA/NY, incorporated as a bar association under the laws of New York State, is NELA's New York State affiliate. Many of our members represent workers who are wrongfully denied reasonable accommodations and lose their jobs after requesting such accommodations.

Reasonable accommodations are an essential feature of the New York State Human Rights Law. The law guarantees New Yorkers the right to such accommodations based on disability (Executive Law § 296(3)(c), (2-a)(d), (14), (18)), pregnancy-related conditions (Executive Law § 296(3)(a)), religious observances (Executive Law § 296(10)), and domestic violence victim status (Executive Law § 296(22)(c)(1)). Under these statutes, employers, landlords, and public accommodations (like movie theaters and supermarkets) must offer reasonable accommodations. These requirements ensure equal access to employment, housing, and public accommodations regardless of protected status.

Yet the language of the Human Rights Law does not explicitly prohibit employers, landlords and providers of public accommodation from retaliating against someone who requests a reasonable accommodation. This omission has led to paradoxical outcomes, where some courts have held that the act of requesting an accommodation is not protected activity. *E.g. D'Amico v. City of New York*, 73 N.Y.S.3d 540, 541 (1<sup>st</sup> Dept. 2018); *Witchard v. Montefiore Med. Ctr.*, 960 N.Y.S.2d 402, 403 (2013); *McKenzie v. Meridian Cap. Grp., LLC*, 829 N.Y.S.2d 129 (2d Dept. 2006). In the context of employment, for example, this could mean that an employer could fire a worker simply for requesting an accommodation and not be held liable under the anti-retaliation provisions of the Human Rights Law.

The Legislature could never have intended such a perverse outcome. Courts have consistently interpreted the State Human Rights Law at least as broadly as federal law,<sup>1</sup> and federal law has long held that reasonable accommodations requests are protected activity that can give rise to retaliation claims. *E.g.* 42 USC § 12203(b); 42 USC § 2000gg-1. Moreover, the Human Rights Law has certain broadly worded anti-retaliation protections, which are designed to “[m]aintain[] unfettered access to statutory remedial mechanisms.” *Clifton Park Apartments, LLC v. New York State Div. of Hum. Rts.*, No. 2, 2024 WL 628036, at \*2 (Ct. of App. N.Y. Feb. 15, 2024). Employees hardly have “unfettered access” to reasonable accommodations if employers can fire them for requesting such accommodations.

For this reason, in 2019, the New York City Council clarified the language of the City Human Rights Law in the same way that S8888/A10002 would clarify the State Human Rights Law. N.Y.C. Council Local Law No. 129 of 2019. The City Law now unambiguously states that requesting a reasonable accommodation is a protected activity that can give rise to a retaliation claims. NYC Admin Code § 8-107(7).

The State Legislature should now take the same step. The Legislature should pass the Reasonable Accommodation Anti-Retaliation Act S8888/A10002 to clarify that the State Human Rights Law always prohibited retaliation for requesting a reasonable accommodation.

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<sup>1</sup> In fact, the State Human Rights Law should now be interpreted, like the City Human Rights Law, to be even broader than federal law. *See Cannizzaro v. City of New York*, 82 Misc. 3d 563, 577, 206 N.Y.S.3d 868, 885 (N.Y. Sup. Ct. 2023) (noting “the amended NYSHRL adopts the same standard as the NYCHRL”); *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 76, 872 N.Y.S.2d 27, 38 (2009) (noting the NYCHRL was “explicitly designed to be broader” than federal law).