

New York City to Prohibit Retaliation for Requesting Reasonable Accommodation

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On June 13, 2019, the New York City Council passed [Intro 799](#) to prohibit retaliation against individuals who make a request for a reasonable accommodation under any applicable provision of chapter 1 of the New York City Human Rights Law.

The bill awaits Mayor Bill de Blasio's signature. The Mayor is expected to sign it. The bill takes effect 120 days after it is signed.

Background

Under the New York City Human Rights Law (NYCHRL), an employer must provide reasonable accommodations to employees that allow them to perform the essential functions of their job in connection with disability, pregnancy, domestic violence victim status, or membership in another protected class, unless doing so would cause "undue hardship" to the employer.

The NYCHRL expressly prohibits employers, landlords, and other covered entities from retaliating against individuals who engage in a "protected activity," such as filing a discrimination complaint, assisting in discrimination proceedings and investigations, or opposing behavior that could be deemed as discriminatory under NYCHRL.

Some recent rulings by the Appellate Division of the New York Supreme Court have adopted a highly restrictive view of the NYCHRL, excluding requests for reasonable accommodations from the list of protected activities. (See, *e.g.*, *Witchard v. Montefiore Medical Center*, 960 N.Y.S.2d 402 (1st Dep't 2013); *McKenzie v. Meridian Capital Group, LLC*, 35 A.D.3d 676 (2nd Dep't 2006).) Subsequent to these decisions, the Equal Employment Opportunity Commission (EEOC) released guidance on retaliatory actions, classifying a request for reasonable accommodation as a protected activity for the purposes of retaliation. ([EEOC Enforcement Guidance on Retaliation and Related Issues](#), August 25, 2016.)

Citing the EEOC in the Committee on Civil and Human Rights' Report on the bill, Intro 799 "affirms" the EEOC guidance and adds "requested a reasonable accommodation" to the list of protected activities. The addition clarifies that, rather than the protections being limited to opposing an unlawful discriminatory act, individuals are indeed protected from retaliation when they request a reasonable accommodation.

Specifics and Adoption

Chapter 1 of § 8-107(7) of the NYCHRL, with the addition of a new subparagraph (v), now reads as follows:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has

- (i) opposed any practice forbidden under this chapter,
- (ii) filed a complaint, testified or assisted in any proceeding under this chapter,
- (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter,
- (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title,
- (v) *requested a reasonable accommodation under this chapter, or*
- (vi) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 [Mediation and conciliation] of this chapter.

The Jackson Lewis Government Relations practice monitors and tracks all legislation introduced in New York and advocates for client positions at all levels of city and state government.

Please contact Jackson Lewis with any questions about Intro 799, compliance, or government relations.

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