Labor & Employment Law Daily Wrap Up, DISCRIMINATION—S.D.N.Y.: City employee's retaliation and Section 1983 claims proceed, disability bias claim is out, (Jan 6, 2026)

By Molly Platnick

Terminating the employee's work-from-home accommodation was an adverse action for purposes of her retaliation claim, but not her disability discrimination claim.

The federal district court for the Southern District of New York granted in part and denied in part the New York City's motion for summary judgment in a case brought by an employee who resigned after her FMLA accommodations were discontinued. The employee's amended complaint alleged the city and her supervisor passed her over for promotion because of her age and race and retaliated against her for filing this lawsuit. The court found there was no genuine dispute regarding disability discrimination because failure to accommodate is not an adverse employment action in that context. The employee can proceed with her retaliation claim, as commencing litigation is a protected action and denial of accommodation does constitute an adverse action for retaliation (*Ramirez v. City of New York*, No. 24-cv-1061 (S.D.N.Y. Jan 2, 2026)).

Supervisor's comments. The employee, who is of Guyanese and Indian descent, worked for the New York City Department of Social Services (DSS). From 2018 to 2022 she was supervised by another woman of Indian and Guyanese descent. The employee claimed the supervisor repeatedly made derogatory remarks about Guyanese people, including that she "didn't believe another Guyanese employee…was qualified." The also supervisor allegedly said, "coworkers who were in their 70s needed to retire" and expressed a desire to "fill the department with new and younger people."

Work-from-home accommodation. In 2022, the supervisor was promoted and the employee applied for her position. She did not get an interview, and the job went to a 50-year-old white man. The employee developed anxiety, osteoporosis, and postherpetic neuralgia, which she attributed to "the stress of being treated unfairly and passed up for the promotion." She requested FMLA leave from January to April 2023, and when her leave expired, she received an accommodation to work from home.

In February 2024, the employee filed this action against the City of New York and her former and current supervisors. She asserted the first supervisor "subjected her to differential terms of employment" based on her race and the second was promoted over her because he is younger and white.

The employee continued to work from home while this suit was pending, and her accommodation was extended until at least July 2024. In late 2024, DSS denied the employee's extension request on her supervisor's recommendation. The supervisor complained he had become the "de facto manager" of the five staff members the employee was meant to oversee, an arrangement he called "not sustainable to continue."

Offered three days at home. The employee appealed to the DSS Reasonable Accommodations Appeal Panel, which upheld the denial, finding "lack of presence in the office…created both operational and staffing disruption/deficiencies." However, the Board asked to "work with her to…best accommodate her stated medical limitations to assist her in the performance of her job duties." The Board offered to let the employee work from home three days a week, take extra breaks, and receive ergonomic equipment for her office.

Resigned. Instead, the employee resigned three days after the appeal panel's decision due to "profound humiliation and embarrassment that…made it impossible for her to continue working."

The employee amended her complaint to add retaliation claims and withdrew her claims against the replacement

supervisor. The defendants moved for partial summary judgment.

42 U.S.C. § 1983. The city and the former supervisor argued the employee's claim is barred by 42 U.S.C. § 1981, which "does not provide a separate private right of action against state actors." The court, however, did not see the employee's claim as a "standalone" § 1981 claim. Rather it was § 1983 claim properly "predicated on alleged violations of the rights that she enjoys under § 1981."

Disability discrimination. To plead disability discrimination under the Rehabilitation Act, an employee must show (1) her employer is subject to the Act; (2) she is disabled; (3) she was "otherwise qualified to perform the essential functions of her job, with/without reasonable accommodation; (4) she suffered adverse employment action because of her disability. The fourth prong was at issue here, as the employer argued failure to provide reasonable accommodation is not on its own adverse employment action. The court agreed, but clarified failure to accommodate is not itself an adverse employment action only with regard to disability-discrimination claims. The court noted a failure-to-accommodate claim is the correct statutory remedy for denial of accommodations.

Constructive discharge. Next, the court considered whether the employee was subject to a constructive discharge, which is an adverse employment action, when DSS denied her accommodations. The employee claimed she was constructively discharged because (1) the City "essentially nixed" her position when she was passed over for promotion and (2) she was denied accommodations. The court rejected the first theory as nonsensical; the employee stated she was constructively discharged based on a disability caused by the constructive discharge. As for the second theory, the court found the employee did not show she was subject to an adverse employment action *because of* her disability. Rather, as described above, the record shows the DSS panel made every effort to continue to accommodate the employee's disability, but she chose to immediately resign.

Retaliation claims can proceed. A plaintiff has met the necessary elements of a retaliation claim under the Rehabilitation Act if she shows (1) she was engaged in a protected activity, (2) defendant *knew* she was engaged in a protected activity, (3) she was subject to adverse action, and (4) a causal connection between the protected activity and the adverse action. Here, the court construed the employee's "bringing litigation" as a protected activity. New York City and the former supervisor knew the employee was suing them and waived any argument that they did *not* know by not including it in their initial summary judgment brief.

In the retaliation context, the court explained, denial of accommodation can itself constitute an adverse action. Thus, there is a genuine dispute of material fact whether the employee's lawsuit, which is the protected action, caused the adverse employment action, and this claim survived the motion for summary judgment.

The case is No. 1:24-cv-01061-AS.

Judge: Subramanian, A.

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Companies: City of New York

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