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## Memorandum of Support

### Expand Protections Under New York State Human Rights Law

S.3817 (Biaggi)/A7083 (Simotas)

Empire Justice Center strongly supports and urges the swift passage of this legislation to amend the New York State Human Rights Law (NYSHRL) as a critical access to justice measure. This bill will have a considerable positive impact on New Yorkers who face discrimination and harassment in the workplace. Currently, there is inequitable legal recourse and significant barriers for New Yorkers who are subject to workplace discrimination and harassment and seek to hold their employers accountable and enforce their rights. This legislation eliminates the inequities and removes barriers to asserting rights under the NYSHRL.

The bill does this by expanding civil rights to all protected categories of employees by treating all forms of discrimination and harassment equally rather than only providing increased protections for victims of sexual harassment. Currently, only victims of sex discrimination and harassment have the right to bring claims against small employers and independent contractors and recover attorney's fees in successful claims. These amendments extend the rights currently held by victims of sex discrimination and sexual harassment to all protected categories of employees. This will level the playing field and ensure that all employees who are members of any protected class are provided equal legal protections and equal opportunity to enforce their civil rights. This is a fair and logical development in the law and we applaud the effort to address the current inequities in the law with this proposed legislation.

Critically, this legislation also removes barriers for workers who wish to enforce their civil rights under the NYSHRL.

The proposed legislation will:

- Remove the current harsh “severe or pervasive” standard which requires plaintiffs to prove that the complained of conduct was “severe” or “pervasive” in order to prevail. Under this amendment, the burden shifts to the employer, and any discrimination or harassment is actionable unless the employer shows that the conduct is a “petty slight” or trivial inconvenience”.

- Affirmatively prohibit employers from arguing that they are not legally responsible for discrimination and harassment because an employee failed to complain to the employer or use an internal employer complaint procedure. This provision prevents employers from absconding liability under the Faragher/ Ellerth defense;
- Provide mandatory attorney's fees to the prevailing party which is an essential component to increasing access to justice for all New Yorkers. Under this amendment, New Yorkers, who have meritorious claims for discrimination and harassment, but do not have the financial resources for an attorney, will have their attorney's fees paid for by the employer. Importantly, a defendant employer is also entitled to recover attorney's fees on motion and upon a showing that the action was frivolous. This provision provides for fair and just access to the protections under this law;
- Hold employers responsible for the discrimination and harassment of supervisors. Currently, an employee must show that the employer encouraged, condoned or approved of the supervisor's discriminatory or harassing conduct in order to prevail. This amendment removes this barrier by expanding liability to employers for discrimination and harassment committed by supervisors. This provision will encourage employers to train supervisors and make it a priority to create a workplace free from discrimination and harassment;
- Award punitive damages which will encourage employers to engage in lawful behavior or be subject to significant damages. This will provide an incentive for employers to take complaints of discrimination and harassment seriously and to take the steps necessary to create a workplace free from discrimination and harassment; and
- Provide that an employer's adverse actions against employees are unlawful if they are motivated by discriminatory or retaliatory motives.

Empire Justice Center strongly supports the amendment to New York State Human Rights Law (NYSHRL) S.3817(Biaggi)/A7083(Simotas) and urges its swift passage to ensure the right to equal employment opportunities, to strengthen civil rights for all New Yorkers, and to increase access to justice for workers throughout New York State.

**This memorandum was prepared by:**

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