

Cooperating with New York City's New 'Cooperative Dialogue' Requirement

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With the spotlight on the new laws combating sexual harassment in New York, employers may have missed a significant new modification to New York City law mandating a “cooperative dialogue” in response to workplace requests for reasonable accommodations.

For several years, the New York City Human Rights Law (NYCHRL) has required New York City employers to provide reasonable accommodations for employees with disabilities, or for reasons related to pregnancy or childbirth, religious needs, or domestic violence, unless such modifications would create an “undue hardship.” However, as of October 16, 2018, the NYCHRL now sets forth a new procedure employers must follow in response to all such accommodation requests.

The amendment defines a “cooperative dialogue” as a good-faith “written or oral dialogue” between an employer and the employee who has requested or requires the reasonable accommodation. The law now specifically details the issues that must be addressed during the dialogue, including, the employee’s specific accommodation needs, the types of accommodations available and alternatives that may accommodate the employee’s needs, and any difficulties the accommodations may pose for the employer or the employer’s business. Significantly, the cooperative dialogue may consist of several exchanges, either verbal or written, as the parties continue to discuss and assess these issues. Although the amendment does not require that an employer impose a reasonable accommodation that fails to allow an employee to perform the essential functions of his or her job, or imposes an undue hardship on the employer, it does require the employer to both engage in and complete the cooperative dialogue process.

Likely the most noteworthy component of the amendment is a requirement that a New York City employer issue a “written final determination” following the completion of the cooperative dialogue. This concept of documentation is neither required by the current version of the NYCHRL or by the Americans with Disabilities Act, which also requires an interactive process. Accordingly, once the employer has reached a final determination, it must provide a written document to the requesting employee identifying whether the accommodation has been granted or denied.

Importantly, failing to engage in a cooperative dialogue or to provide a written final determination each will be an independent violation of the NYCHRL. Any such violations could expose an employer to civil damages, penalties and other legal repercussions.

In response to the new NYCHRL requirements, employers should review and update any policies and procedures addressing such workplace accommodations to ensure compliance with the requirements to engage in a cooperative dialogue and issue written determinations. Furthermore, New York City employers also should make certain that all decision-makers, supervisors, and human resources staff fully understand the new requirements.

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