Legal Update Article

New York City 'Cooperative Dialogue' Mandate Over Accommodations Requests Starts October 15

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Employers covered by the New York City Human Rights Law (HRL) must engage in a "cooperative dialogue" with persons who may be entitled to reasonable accommodations under the HRL beginning October 15, 2018.

This "cooperative dialogue" requirement is the result of a bill (Int. No. 804-A) passed December 19, 2017, by the New York City Council. It became law on January 19, 2018, after Mayor de Blasio failed to take action within 30 days of passage by the New York City Council.

Importantly, the new law creates a separate cause of action against covered entities that "refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require such an accommodation." The HRL requires covered entities to make reasonable accommodations for the following:

1. Victims of domestic violence, sex offenses or stalking;
2. Pregnancy, childbirth or a related medical condition;
3. Religious needs; and
4. Disabilities.

"Cooperative dialogue" is defined under the law as a "process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity."

Significantly, after the parties have engaged in the cooperative dialogue process, the law requires the covered entity to provide the person requesting an accommodation a final written determination identifying any accommodation granted or denied.

The New York City Commission on Human Rights recently released legal enforcement guidance on disability discrimination that contains information on how a covered entity complies with this accommodation obligation in the context of individuals with disabilities. For example, the guidance states, "the dialogue may be in person, in writing, by phone, or via electronic means." It also includes factors the Commission will consider in determining whether a covered entity has engaged in good faith with the individual.

New York City employers need to prepare now to meet the new legislation's significant expansion of reasonable accommodations. Employers should examine their reasonable accommodations protocols, including any relevant policies and

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practices, to ensure they cover not only the expanded circumstances where cooperative dialogues are required, but the fairly expansive issues that should be addressed as part of that dialogue.

Employers also should examine their operational ability to ensure this dialogue takes place within a "reasonable time" and to provide written responses once they conclude a "cooperative dialogue."

While many covered employers have established protocols for handling accommodation issues, they need to realize that the new legislation imposes significantly greater burdens to develop and implement processes to ensure a cooperative dialogue occurs and is documented for every accommodation request, even those that might be unreasonable on their face. In effect, the new law makes the process of responding to disability-related reasonable accommodation requests as important as the decision to grant or deny accommodations.

For more information, see our articles:

- New York City Employers Must Engage Employees in Accommodations Dialogue under New Law
- New York City Council Passes Bill Requiring Employers to Engage Employees in Accommodations Dialogue

For information on other recent New York City developments, please see:

- Reminder: New York City Employers Must Distribute Fact Sheet, Post Notice on Sexual Harassment Law by Sept. 6
- New York City Commission on Human Rights Issues Mandatory Sexual Harassment Notice and Fact Sheet
- New York City DCA Issues Guidance on Temporary Schedule Change Amendments to Fair Workweek Law
- Temporary Schedule Change Amendments to New York City Fair Workweek Law Effective July 18

Please contact a Jackson Lewis attorney with any questions related to policies and other preventive practices.