



OCTOBER 12, 2018

## **New York City's New Reasonable Accommodation Standard Requires a Cooperative Dialogue**

On January 19, 2018, New York City amended the New York City Human Rights Law (“NYCHRL”) to require covered entities — including employers and public accommodations — to engage in a cooperative dialogue with individuals who may be entitled to reasonable accommodations. An accommodation is a modification or adjustment to a policy, practice, procedure, job, work environment, or hiring process that allows a covered individual to partake in a service or to perform her job duties. Under the amended NYCHRL, portions of which go into effect on October 15, 2018, employers will be required to engage in a cooperative dialogue within a reasonable timeframe with a person who has requested an accommodation—“or who the employer has notice may require such an accommodation”—related to:

- religious needs;
- disability;
- pregnancy, childbirth, or a related medical condition; or
- a person’s needs as a victim of domestic violence, sex offenses, or stalking.

### **Where, When, and How the Dialogue Must Occur**

The cooperative dialogue may take place in person, in writing, by phone, or through electronic means, but it must be conducted in good faith and in a “transparent and expeditious manner.” An employer may request additional information about the employee’s specific impairment if the employer does not have sufficient information to understand or evaluate the employee’s need. Employers are also allowed to propose reasonable alternatives to an employee’s requested accommodation.

## **The Length of the Dialogue**

A cooperative dialogue is considered ongoing until either (i) a reasonable accommodation is granted or (ii) the employer concludes that:

- there is only one accommodation that is reasonable and will not result in undue hardship for the employer, but the applicant or employee refuses to accept that accommodation;
- the employee or applicant has refused the less expensive of two reasonable accommodations; or
- no accommodation exists that will allow the applicant or employee to perform the essential functions of the job or that will not impose an undue hardship on the employer.

## **Written Notice**

An employer must notify an employee, in a timely manner and in writing, of its decision, in a final determination identifying any accommodation that is either granted or denied. The determination is only valid if the parties have engaged, or the employer has attempted to engage, in a cooperative dialogue. A request cannot be denied until after the cooperative dialogue has taken place. Employers must engage in the cooperative dialogue process each time an employee (or applicant) makes a new request for an accommodation.

## **Determining Whether an Employer has Engaged in a Good Faith Cooperative Dialogue**

The New York City Commission on Human Rights will consider the following to determine whether an employer has engaged in a cooperative dialogue in good faith:

- whether the employer has a policy that informs employees how to request accommodations,
- whether the employer responded to the request in a timely manner given the urgency and reasonableness of the request, and
- whether the employer attempted to obstruct or delay the cooperative dialogue to intimidate or deter the request.

## **Takeaway**

New York City has long followed the example set forth by the Americans with Disabilities Act (“ADA”) in determining the type of dialogue employers must engage in with an employee when determining the reasonableness of an accommodation request. Under the ADA, once an employer becomes aware of the need for accommodation, the employer has an obligation to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. However, the ADA does not define the steps an employer should take as part of the interactive process – and, until now, neither did New York City. Now, with the inclusion of the cooperative dialogue provision of the NYCHRL, New York City has established how the dialogue is to take place. Employers should review their existing interactive protocols to ensure that they comply with the new cooperative dialogue standard. An employer’s process should be well documented, cover all of the reasons found within the NYCHRL, and provide a final written determination to the employee. Employers should also include information on their cooperative dialogue and reasonable accommodation policies and processes in an employee handbook.

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We are of course available to assist in drafting and reviewing such policies, and in advising employers on the new reasonable accommodation process.

[Putney, Twombly, Hall & Hirson LLP](#)