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Legal Alert: Expanded Reasonable Accommodation Requirements Coming Soon to New York City

Effective on October 16, 2018, New York City employers must engage in “cooperative dialogue” with individuals who may be entitled to reasonable accommodation for an expanded list of situations under the Human Rights Law (HRL). Failure to engage in a cooperative dialogue will be a violation of the HRL. Providers of public accommodations and housing accommodations are also covered by this law.

What is a Cooperative Dialogue?

Much like the “interactive process” under federal disability law, it is the process by which a covered entity and an individual who may be entitled to an accommodation jointly discuss and identify the available and reasonable accommodations for the individual. The HRL did not previously specify the cooperative dialogue requirement, only stating that employers had an obligation to provide reasonable accommodations unless they could meet the burden of establishing undue hardship. Engaging with an employee who requests a reasonable accommodation, or whose need for accommodation is apparent, is already a good practice. As amended, HRL will require that employers respond to written or oral requests for accommodation with a good faith discussion of the requested accommodation and any alternatives, and then respond with a **written determination** of what accommodation, if any, can be offered. The requirement of a written response is new. It must be provided within a “reasonable time.”

NOTE: An employer must provide an effective accommodation, which may or may not be the accommodation requested. An accommodation need not be provided if it would create an undue hardship (i.e. significant difficulty or expense) for the employer.

Which Individuals are Eligible for a Reasonable Accommodation?

Covered entities are required to make reasonable accommodations for:

1. Victims of domestic violence, sex offenses, or stalking;
2. Individuals with pregnancy and related conditions;
3. Individuals with religious needs; and
4. Individuals with disabilities.

Broader Scope: More Individuals Covered

The cooperative dialogue requirement under the HRL applies to disabled individuals not necessarily covered by the New York State Human Rights Law (NYSHRL), as well as those with religious needs, domestic violence victims, and pregnant employees. The NYSHRL defines

“disability” as any impairment that may be identified by medically acceptable diagnostic techniques, and the Americans with Disabilities Act defines “disability” as an impairment that substantially limits a major life activity. These definitions are narrower than the HRL’s definition, which defines disability as “any physical, medical, mental or psychological impairment, or a history or record of such impairment.”

Further, victims of domestic violence are not explicitly covered individuals under applicable federal laws, and while the NYSHRL was amended in 2009 to provide victims of domestic violence with protection from employment discrimination and reasonable accommodation, this protection does not include an explicit requirement to engage in a cooperative dialogue regarding reasonable accommodations for victims of domestic violence, nor does the protection include a written determination requirement.

What Employers Must Do

- Review written policies
- Update or create a process for responding to accommodation requests
- Train frontline supervisors and other managers on the accommodation process
- Monitor compliance and revise process as needed

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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