

## LABOR AND EMPLOYMENT

**NEW YORK CITY EMPLOYERS REQUIRED TO ENGAGE IN COOPERATIVE DIALOGUE IN RESPONSE TO EMPLOYEE ACCOMMODATION REQUESTS**

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In January 2018, the New York City Council amended the New York City Human Rights Law to require New York City employers with four or more employees to engage in a “cooperative dialogue” in response to employee accommodation requests. Most employers are already familiar with the reasonable accommodation process required in response to employee disability-related accommodation requests under the federal Americans with Disabilities Act. However, the new requirements, effective October 15, 2018, apply to more than just disability-related accommodation requests and provide additional details on the City’s cooperative dialogue requirements.

**Highlights of the new requirements include:**

- Cooperative dialogue is defined as the process by which an employer and employee “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 [employer].”
- In addition to engaging in a cooperative dialogue regarding disability-related accommodation requests, New York City employers are also required to enter into that dialogue for the following: religious accommodations; accommodations related to pregnancy, childbirth or a related medical condition; and for the needs of a victim of domestic violence, sex offenses or stalking.
- The duty to engage in the cooperative dialogue commences when an employee requests an accommodation, or the employer has notice that the employee may need an accommodation (for example, when the need for an accommodation is obvious or someone other than the employee requests an accommodation on behalf of the employee).
- After conclusion of the cooperative dialogue, the employer is required to provide the employee with a written final determination identifying any accommodation granted or denied.
- It is important to note that employers must engage, or attempt to engage, in the cooperative dialogue before concluding that no reasonable accommodation exists.
- Failure to engage in the cooperative dialogue process (including issuing a final written determination) constitutes an unlawful discriminatory practice under the City’s Human Rights Law.

We recommend New York City employers update their reasonable accommodation policies and practices to comply with the new requirements. This would include establishing procedures for the issuance of a final written determination at the conclusion of the cooperative dialogue process. We also encourage employers to train Human Resources and managers on the cooperative dialogue requirements, including the duty to

engage in a cooperative dialogue for non-disability related accommodation requests (e.g., accommodations related to religious needs, pregnancy, childbirth, domestic violence, sex offenses, stalking, etc.).

Harter Secrest & Emery's Labor and Employment Law attorneys have extensive experience helping employers comply with the various federal, state, and local reasonable accommodation requirements—and we can help you comply with these new requirements. Please do not hesitate to contact any member of our firm's [Labor and Employment](#) Practice Group at (585) 232-6500 or visit [www.hselaw.com](http://www.hselaw.com).

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