

# Client Alert **Employment & Labor**

## *Accommodation Requests & “Cooperative Dialogue” – New Administrative Requirements for NYC Employers*

In our [June 2018 Client Alert](#), we outlined sweeping changes to New York City’s Human Rights Law (“NYCHRL”), designed to address growing concerns about sexual harassment in the workplace. Last month, additional amendments to the NYCHRL went into effect, subjecting New York City employers to new obligations with regard to employees that require (or may require) accommodations in the workplace.

On October 15, 2018, amendments went into effect requiring that all employers engage in a defined “cooperative dialogue” with any employee that is “entitled to an accommodation” or “may be entitled to an accommodation.” The City Council in so doing brought the NYCHRL in line with the federal Americans with Disabilities Act which requires an employer to engage in an “interactive process” to determine the needs of a particular employee, and the extent to which the employer would be able to accommodate them. In defining “cooperative dialogue,” the law provides that it can be an oral or written dialogue, but that it must represent a good faith discussion of:

- (1) the employee’s needs;
- (2) potential accommodations that may address those needs;
- (3) alternatives to any requested accommodations; and
- (4) the difficulties that the accommodation may pose to the employer.

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The new law creates an affirmative duty for all New York City employers to engage in the cooperative dialogue “within a reasonable time” of an employee requesting an accommodation or the employer noticing the employee may require an accommodation. This obligation applies to accommodations for disabilities, religious purposes, pregnancy-related conditions, or for needs related to being a victim of domestic violence, sexual offenses, or stalking.

Importantly, and unlike federal law, the NYC law requires a “written final determination” be issued by the employer, following the cooperative dialogue. The determination must be provided to any individual requesting the accommodation, if they participated in the cooperative dialogue, and must identify any accommodations granted or denied. An employer violates the NYCHRL if they issue an ultimate determination that a reasonable accommodation is not possible, without engaging in the dialogue or attempting to engage in the dialogue.

### Employer Tips

New York City based employers of all sizes need to adjust their policies and internal responses to accommodation requests in order to comply with the new requirements under the law, and be prepared, with assistance of counsel, to issue written determinations that comply with both local and federal obligations. Training of managers should also take into account these new requirements as managers are often the first to know of an employee’s need for an accommodation.

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The following attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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