

EMPLOYMENT LAW UPDATE
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On January 19, 2018, the New York City Council amended the New York City Human Rights Law in relation to reasonable accommodations for individuals who are or may be entitled to reasonable accommodations. This amendment, Int 0804-2015, went into effect on October 15, 2018. This requirement applies to employers with four or more employees.

Prior to this amendment, when an employee requested an accommodation, employers were required to engage in an interactive process with the employee. The amendment provides clarity and direction as to what an employer must do to satisfy the requirements of an interactive process. The amendment defines a good faith interactive process as, “a good faith, timely and flexible dialogue to determine what accommodations are feasible in which both the employee and employer may propose alternative arrangements.”

The amendment also explains the employer obligation to “reasonably accommodate a person with a known disability [requiring] covered entity to engage in a good faith interactive process to identify potential accommodations and evaluate the reasonableness of any accommodation proposed by such person. At the conclusion of such process, the covered entity shall notify such person, *in writing*, of the covered entity’s decision regarding any accommodation proposed or discussed.”

Once an employer is on notice of an employee’s accommodation need, there is an obligation of cooperative dialogue. The dialogue can be in person, by phone, or via electronic means. Each time an employee makes an accommodation request, the employer must engage in cooperative dialogue prior to reaching a final determination, no matter how similar the request is to a past accommodation request. If the employee’s circumstances change, an employee can make a new request for accommodations that must be fully considered in the same manner as the first accommodation request.

While the amendment does not define timely, the NYC Commission on Human Rights has published guidance where it defines the timely obligation as, “whether the employer responded to the request in a timely manner in light of the urgency of the request.” The guidance also explains other factors to be considered when determining if an employer engaged in a cooperative dialogue in good faith. Other factors include, “whether the employer attempted to explore the existence and feasibility of alternative accommodations or alternative positions” and “whether the employer attempted to obstruct or delay the cooperative dialogue or in any way intimidate or deter the employee from requesting the accommodation.”

The takeaway for employers is when an employee makes a request for an accommodation, an employer must evaluate the accommodation and have a dialogue with the employee regarding the potential accommodations and consider suggestions from the employee. Once cooperative dialogue has taken place, ***an employer must notify the employee in writing regarding the decision.*** With the notification requirements, it is vital to keep sufficient records of the cooperative dialogue and the determination.

The takeaway for employees is to ensure that the employer is engaging in a good faith interactive process when discussing potential accommodations. If they are not, or do not provide in writing the decision, then they are not complying with the requirements. It is important to keep good records of all communications regarding the accommodation.

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