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New York City Employers Must Document Reasonable Accommodations

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Late last year, the New York City Council amended the New York City Human Rights Law (CHRL) to expand employer obligations requiring reasonable workplace accommodations for employees and relevant job applicants. These expanded obligations go into effect on October 15, 2018.

Under the CHRL, employers with more than four employees are required to provide reasonable accommodations to employees with disabilities as well as those who are pregnant, victims of domestic violence, or have religious reasons and needs. The duty to provide reasonable accommodations to such individuals also applies to applicants for employment.

New York City employers must be aware of two significant requirements within the amended law. First, employers must engage in a "cooperative dialogue" with an employee who requests a reasonable accommodation:

- For religious reasons;
- Related to a disability;
- Concerning pregnancy, childbirth, or a related medical condition; or
- For their needs as a victim of domestic violence, stalking, or sexual offenses.

The "cooperative dialogue" requires employers to engage in a good faith conversation with the employee (or applicant for employment) concerning the individual's accommodation needs, potential accommodations (including alternatives to the accommodation proposed by the employee), and any difficulties that the proposed accommodation could pose for the employer. This cooperative dialogue continues until an accommodation is ultimately granted or denied. At the conclusion of the cooperative dialogue, the employer **must provide the employee with a written final determination of the accommodation that was either granted or denied**. Without providing a written final determination, the employer's actions could be deemed as a failure to engage in the required cooperative dialogue. Because such a failure violates the CHRL, employers could face compensatory damages, punitive damages, attorneys' fees, and additional costs.

To assist employers with the cooperative dialogue process, the New York Commission on Human Rights has published its Legal Enforcement Guidance on Discrimination on the Basis of Disability. Among other things, this document contains a sample Reasonable Accommodation Request form, a sample Grant or Denial of Reasonable Accommodation Request form, and a sample letter to send to employees who are taking leave as a reasonable accommodation.

Second, employers should keep a log of every reasonable accommodation that they provide to employees. While significant accommodations will require employers to engage in a cooperative dialogue, many accommodations that employers provide are routinely granted without any issues and thus remain undocumented; these are, in effect, "conveniences." For example, an employer may permit a pregnant employee to have additional bathroom breaks, or a Jewish employee to change his schedule so that he can observe Yom Kippur, or an employee with an illness to take an unpaid sick day. While these accommodations are often non-issues, the employer should mitigate legal risks by

documenting evidence that it routinely provides reasonable accommodations to employees. A log detailing all such reasonable accommodations would be helpful to employers facing potential disputes or litigation.

No later than October 15, New York City employers must ensure that they properly document all accommodations/conveniences – no matter how mundane or trivial – provided to employees because of the employee's: (1) disability; (2) pregnancy, childbirth or related medical condition; (3) religion; or (4) experiences as a victim of domestic violence, sexual offenses, or stalking.

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