Labor and Employment Alert: New York City Mandates an Interactive Process for Most Accommodation Requests

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Benjamin A. Shepler

Michael C. Griffaton

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The New York City Human Rights Law (HRL) prohibits discrimination on the basis of age, citizenship, arrest or conviction record, caregiver status, color, credit history, disability, gender, gender identity, marital status, national origin, pregnancy, race, religion, salary history, sexual orientation, domestic violence victim status, unemployment status, or veteran or military status. The HRL also requires the entities (such as employers) it covers to make reasonable accommodations for victims of domestic violence, individuals with pregnancy and related conditions, religious needs, and disabilities, so long as these accommodations would not impose an "undue hardship." New York courts had held that an employer's failure to engage in a good faith interactive process in response to a request for an accommodation does not violate the HRL. Rather, it was simply one factor to be considered in deciding whether a reasonable accommodation was available.

Recently, the New York City Council amended the HRL to mandate that an interactive process occur. But effective October 15, 2018, entities covered by the HRL – which includes employers and places of public accommodation – are expressly required to engage in a "cooperative dialog" whenever a person needs a reasonable accommodation. The HRL defines a "cooperative dialogue" as the process by which an employer and a person entitled to an accommodation, or who may be entitled to an accommodation, 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.

The HRL now makes clear that it is an unlawful discriminatory practice for an employer to refuse or otherwise fail to engage in a "cooperative dialogue" within a reasonable time with a person who has requested an accommodation or who the employer has notice may require such an accommodation: (1) for religious needs; (2) when related to a disability; (3) when related to pregnancy, childbirth, or a related medical condition; or (4) for the person's needs as a victim of domestic violence,

sex offenses, or stalking.

Upon reaching a final determination at the conclusion of a cooperative dialogue, the employer must provide the person requesting an accommodation who participated in the cooperative dialogue with a written final determination identifying any accommodation granted or denied. The determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue. An employer's compliance with the cooperative dialog mandate is not a defense to a claim of not providing a reasonable accommodation.

This directive to engage in a cooperative dialog is more expansive than an employer's duty to engage in the interactive process under the federal Americans with Disabilities Act (ADA). Notably, the cooperative dialog encompasses a variety of accommodation requests not covered by the ADA, and employers must provide a written determination of the accommodation request. Employers should review their policies and procedures for handling accommodation requests (as well as training managers and human resources in the cooperative dialog process) in light of the HRL's new requirements. Contact your Vorys lawyer if you have questions about accommodation requests.