

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

DATE: February 1, 2018

TO: New York City Clients

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: NYC Council Codifies the Interactive Process When Addressing Employee and Applicant Accommodation Requests in the Workplace

Late last year, the New York City Council passed an amendment to the New York City Human Rights Law (“NYCHRL”) that requires employers to proactively engage in a “cooperative dialogue” with employees who may be entitled to a reasonable accommodation. Because Mayor de Blasio failed to take any action on the amendment, it automatically became law on January 26, 2018. The law will not take effect until October 15, 2018.

The law codifies the interactive process that most employers already engage in with qualified employees who request an accommodation and also adds a few procedural requirements. Specifically, the amendment defines “cooperative dialogue” as follows:

[T]he process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person’s accommodation needs, including alternatives to a requested accommodation, and the difficulties that such potential accommodation may pose for the covered entity.

It is now, therefore, unlawful if an employer fails to engage in a cooperative dialogue with employees who may be entitled to an accommodation: (i) for religious needs, (ii) due to a disability, (iii) as a result of pregnancy, childbirth or a related medical condition, or (iv) as a result of domestic violence, sex offenses or stalking.

The law, which also applies in the public and housing accommodation contexts, requires the following procedural steps:

- That “[u]pon reaching a final determination at the conclusion of a cooperative dialogue,” employers must provide “a written final determination [to the person requesting an accommodation] identifying any accommodation granted or denied.”
- That “[t]he determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.”

In general, the NYCHRL applies to employers with four or more employees but in the case of persons with disabilities or victims of domestic violence, sex offenses, or stalking, the amendment applies to all New York City employers regardless of the number of employees. Additionally, the amendment applies to both job applicants and employees, except for the requirement to accommodate persons with conditions related to pregnancy or childbirth, which only applies to employees.

The amendment does not have its own prescribed penalties. Penalties under the NYCHRL are up to \$125,000 for violations, and up to \$250,000 for violations that are the result of willful, wanton, or malicious conduct. There is no limit to the amount of compensatory damages the Commission may award to a victim of discrimination.

New York City employers should review their policies and practices to ensure that it engages in, and properly documents, the “cooperative dialogue”. Further, employers should train managers on these new requirements, particularly in light of the fact that unlike federal law, victims of domestic violence, stalking and sex offenses are covered by the new law. Employees should also be trained on the reporting mechanisms in place and that any need for an accommodation should be promptly reported.

If you have any questions or need assistance in revising your handbook or policies, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Robert L. Sacks, Michael Lydak, Jennifer Schmalz or Jaclyn Ruocco.

This memo is provided for informational purposes only.

It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.