

Gearing up for NYC's "Cooperative Dialogue" Requirement Effective October 15: What Employers Need to Know

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While this month brought significant changes to all New York State employers in addressing [workplace harassment](#), NYC employers will need to change gears and ensure that their policies and practices for addressing workplace accommodations are compliant with the amendment to the New York City Human Rights Law (NYCHRL) that was enacted late last year. Effective October 15, 2018, NYC employers with four or more employees will be required to engage in a "cooperative dialogue" with employees who may be entitled to an accommodation under the NYCHRL. An employer's "cooperative dialogue" obligation will be triggered once the employer learns, either directly or indirectly, of an individual's need for an accommodation. In other words, once an employer is on notice that an employee may require an accommodation of some kind, the obligation to engage in a cooperative dialogue arises.

Specifically, the "cooperative dialogue" process requires NYC employers to:

1. Engage in a good faith written or oral (e.g., in person, by phone, or via electronic means) dialogue with an employee within a reasonable time;
2. Evaluate potential accommodations that may address the employee's accommodation needs without creating an undue hardship, including alternatives to a requested accommodation;
3. Evaluate difficulties that potential accommodations may pose for the employer; and
4. Provide a written final determination to the employee requesting an accommodation at the conclusion of the process that identifies any accommodation granted or denied.

Employers cannot reach a final determination about whether an accommodation will be granted until the parties have engaged, or the employer has attempted to engage, in a cooperative dialogue. Employers also have a continuing obligation to engage in a cooperative dialogue each time an employee makes a new accommodation request. The New York City Commission on Human Rights (the "Commission") issued [disability discrimination guidance](#) in June 2018 that outlines methods of initiating and engaging in the cooperative dialogue process; however, employers should be mindful that the "cooperative dialogue" requirement extends beyond disability accommodation requests and covers employee accommodation needs related to: (1) religion; (2) pregnancy, childbirth, or related medical conditions; and (3) circumstances involving domestic violence, sex offenses, or stalking.

Notably, unlike the "interactive process" requirement under the Americans with Disabilities Act, the NYCHRL's amendment creates an independent cause of action for an employer's failure to engage in the "cooperative dialogue" process (including the law's documentation requirements) within a reasonable time. While the law does not define what temporal limits constitute a "reasonable time," the Commission's June 2018 guidance states that responses should be timely in light of the urgency

and reasonableness of an employee's request. The Commission's guidance also makes clear that an employer's indeterminate or undue delay may have the same effect as an outright denial.

To ensure compliance, employers should review their accommodation policies and practices to confirm that the NYCHRL's "cooperative dialogue" process is applied to all covered accommodation requests under the law. Supervisors and human resources personnel should also understand that they are required to engage in a cooperative dialogue each time an employee makes a new request, and that all accommodation requests now require a final written determination. If you have any questions about this law, please contact [Blythe E. Lovinger](#), [Jonathan A. Wexler](#), [Monique E. Chase](#), [Haley P. Tynes](#) or any other Vedder Price attorney with whom you have worked.

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