March 29, 2018

Now Put It in Writing: New York City's New Employer Requirements for Workplace Accommodations

New York City has some of the most comprehensive laws and regulations governing workplace protections. Effective October 15, 2018, the New York City Human Rights Law (NYCHRL), which applies to employers with four or more employees, will be expanded to require employers to engage in, and document in writing, a "cooperative dialogue" when evaluating employee requests for workplace accommodation.

Accommodation Requirements Under Federal Law

As employers may already know, federal laws, such as the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act, require employers to engage in an "interactive process" with employees who request workplace accommodations due to their special needs relating to disability or religion. Such process is designed to determine whether an accommodation exists that will enable an employee to perform the essential functions of his/her position without creating an undue hardship for the employer. The interactive process may include requesting and obtaining documentation from a healthcare provider, understanding an employee's specific needs, and exploring various potential accommodations. Identifying when an employee is requesting a workplace accommodation is not always a straight-forward task. Employee requests for accommodations come in all forms, and there are no magic words an employee must use to make such a request.

The Requirements of the "Cooperative Dialogue"

In addition to requirements under federal law, many states and local jurisdictions have enacted laws requiring employers to provide workplace accommodations. As of October 15, 2018, employers in New York City will be required to engage in a "cooperative dialogue" with an employee who requests a reasonable accommodation related to any of the following:

- Religious needs
- Disability
- Pregnancy, childbirth or a related medical condition
- Needs as a victim of domestic violence, sex offenses or stalking

The requirements of the cooperative dialogue are in many ways similar to those of the interactive process in which employers must engage when employees request disability-related workplace accommodations under the ADA. The most notable aspect of the requirements of the NYCHRL cooperative dialogue, however, are the administrative obligations they impose. Employers must communicate either orally or in writing with the employee regarding the employee's accommodation needs, potential accommodations (including alternatives to the accommodation proposed by the employee) and any difficulties the proposed accommodations could pose for the employer. At the conclusion of the cooperative dialogue, the employer must provide the employee with a ***written final determination*** identifying any accommodation it granted or denied.

Although documenting employees' accommodation requests and employers' efforts to provide such accommodations is already a best practice for all employers, the amendment requires New York City employers to document this process, which federal law did not previously require. Failing to abide by the NYCHRL's cooperative dialogue requirements is an unlawful discriminatory practice, which may subject the employer to liability for compensatory (front and back pay) and punitive damages as well as attorneys' fees and costs.

The Benefits of This Additional Burden

The mandates of the cooperative dialogue will require employers to be especially vigilant in identifying what are often ambiguous employee requests for workplace accommodations. The plain language of the amendment appears to require employers to provide written final determinations anytime an employee requests even the most minor and seemingly insignificant accommodation, including, for example, variations to his/her work schedule to attend a doctor's appointment, to leave work early (or come in late) due to an unexpected illness, or to observe a religious holiday.

Although the amendment imposes specific obligations on employers when dealing with employee requests for workplace accommodations, those obligations may ultimately aid employers in navigating what is often a highly subjective process in responding to such requests. Similarly, although the requirement that employers provide a final written determination for every employee request for a workplace accommodation imposes an additional burden on employers, if handled properly, it may prove a powerful tool in defending against employees' failure-to-accommodate claims.

What Should Employers Do Now?

In anticipation of the October 15, 2018 effective date, employers should review their policies and ensure managers and human resources personnel are trained to comply with the new requirements under the NYCHRL. Also, given the complexity of accommodation requests and the potential liability for failing to provide employees with reasonable accommodations, employers should seek guidance from legal counsel.

Would you like to receive our *Employment and Labor Quarterly Update?* Sign up here.

Authors



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



David P. Doyle
Partner

Parsippany, NJ | (973) 966-8136

ddoyle@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com