Patterson Belknap Webb & Tyler LLP

Employment Law Alert March 2018

We Need to Talk: NYC Human Rights Law Adds a "Cooperative Dialogue" Requirement

The New York City Council recently passed an amendment to the New York City Administrative Code requiring employers covered by the New York City Human Rights Law ("NYCHRL") to engage in a "cooperative dialogue" with employees and applicants who may be entitled to reasonable accommodations. Generally, all employers with four or more employees are covered by the NYCHRL. The amendment goes into effect on October 15, 2018.

The NYCHRL requires covered employers to make reasonable accommodations for employees, related to:

- Religious needs;
- Disabilities;
- Pregnancy, childbirth, or related conditions; and
- Needs related to status as a victim of domestic violence, sex offenses, or stalking.

Under the NYCHRL, an accommodation is reasonable if it does not cause an undue hardship in the conduct of the covered entity's business. As a practical matter, employers have long been required to engage in a cooperative dialogue under the NYCHRL, similar to the "interactive process" required under the Americans with Disabilities Act ("ADA") when employees request accommodations for disabilities.

The amendment effectively codifies the interactive process requirement in the NYCHRL. It requires employers to engage in a good faith "cooperative dialogue" when an employee requests an accommodation or the employer has notice that the employee may require an accommodation.

The cooperative dialogue may be conducted orally or in writing and must be conducted within a reasonable time after the employee requests an accommodation or the employer has notice that the employee may require an accommodation. The dialogue must address the employee's accommodation needs, potential accommodations that may address those needs (including alternatives to the requested accommodation), and the difficulties that potential accommodations may pose for the employer.

The most significant change for New York City employers is the amendment's new documentation requirement. After engaging in the cooperative dialogue, the employer must provide the employee with a final written determination identifying any accommodation granted or denied. A determination that no reasonable accommodation is available cannot be made until after the parties have engaged, or the employer has attempted to engage, in a cooperative dialogue.

The amendment also requires cooperative dialogues in the context of public accommodations and housing accommodations.

Employers should make sure that their policies require that a cooperative dialogue take place when an employee

requests an accommodation or when the employer has notice that an employee may require an accommodation. It is a best practice for employers to thoroughly document the cooperative dialogue. Employers must also remember to provide a written determination to the employee after the cooperative dialogue is complete.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

Lisa E. Cleary	**212-336-2159**	**lecleary@pbwt.com**
Catherine A. Williams	**212-336-2207**	**cawilliams@pbwt.com**
Helen P. O'Reilly	**212-336-2739**	**horeilly@pbwt.com**
Adam E. Pinto	**212-336-2156**	**apinto@pbwt.com**
Sam A. Yospe	**212-336-2471**	**syospe@pbwt.com**

To subscribe to any of our publications, call us at 212.336.2813, email info@pbwt.com or sign up on our website, https://www.pbwt.com/subscribe/.