

# New NYC Law Requires Employers to Engage in “Cooperative Dialogue” for Workplace Accommodations

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As of October 15, 2018, NYC employers with four or more employees will be required to engage in a “cooperative dialogue” with a person who may be entitled to a workplace accommodation. The “cooperative dialogue” resembles the “interactive process” that most employers are familiar with under the Americans with Disabilities Act, but the [NYC law](#) applies to more than disability-related accommodations and, importantly, requires employers to document the cooperative dialogue process. We have prepared this short Q&A to help employers understand their obligations under the new law.

## **What triggers the obligation?**

- The employee requests an accommodation, or
- The employer is on notice that the employee may require an accommodation (e.g., need for accommodation is apparent; request is made by a surrogate).

## **What types of accommodation requests are subject to the new cooperative dialogue requirements?**

- Religious accommodation
- Disability accommodation

- Accommodations related to pregnancy, childbirth, related medical conditions
- Accommodations for the needs of a victim of domestic violence, sex offenses or stalking

## **What constitutes a cooperative dialogue?**

Written or oral communications concerning:

- The employee's accommodation needs;
- Potential accommodations that may address those needs (including alternatives); or
- Any difficulties the potential accommodations may pose for employer.

## **Documentation requirements?**

- An employer must provide the employee with a "written final determination identifying any accommodation granted or denied."
- A determination that there is no reasonable accommodation that will enable the employee to satisfy essential requisites of their job may only be made after engaging in cooperative dialogue, and must be put in writing to the employee.

## **What are the risks of non-compliance?**

- Failure to engage in cooperative dialogue (including the documentation obligation) is an unlawful discriminatory practice under NYC Human Rights Law.
- Employees can file administrative charges with the NYC Commission on Human Rights or a lawsuit. The Commission itself can also initiate a "Commissioner's Charge".
- *Remedies*: compensatory, punitive, equitable, injunctive relief, civil penalties (up to \$125,000 per violation, and up to \$250,000 for a violation that is willful, wanton or malicious), and/or attorneys' fees in lawsuit.

## **How can employers best prepare?**

- Update reasonable accommodation policies;
- Consider establishing, and communicating to employees, a standard procedure for *requesting* accommodations;
- Consider establishing a standard procedure for *responding* to accommodation requests, in writing;
- Train HR and managers on the cooperative dialogue obligation and requesting/responding procedures and document the training to reduce risk of civil penalties. HR and managers should understand that all accommodation requests now require a written response.

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