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KD Alert: Employers in New York City Now Mandated By Law To Engage In A "Cooperative Dialogue" With An Employee Requesting An Accommodation And Provide Written Documentation

The law previously passed by the New York City Council amending the New York City Human Rights Law ("NYCHRL") requiring all covered employers to engage in a "cooperative dialogue" when an employee requests an accommodation related to his/her disability, religious beliefs, pregnancy, childbirth or related condition, or because the employee was a victim of domestic violence, sexual violence or stalking is now in effect for most New York City employers.

Pursuant to the recent guidance issued by the New York City Commission on Human Rights ("NYCCHR"), the new law requires that once a covered employer becomes aware (directly or indirectly) of an employee's need for an accommodation due to his/her disability, the employer must engage in "good faith in written or oral dialogue" with the employee regarding the employee's accommodation requests, potential accommodations (including alternative accommodations), and any complications the accommodations may pose for the employer (i.e. undue hardship). This dialogue may be accomplished in person, in writing, by phone, or via electronic means.

These good faith verbal or written discussions are required to continue until the request for an accommodation is granted or denied. Once the cooperative dialogue is complete, the law requires employers to memorialize in writing whether any accommodations have been granted or denied. Employers are also obligated to provide the requesting employee with a copy of their final report.

Under the NYCHRL, employees have a private right of action against employers that do not properly participate in the cooperative dialogue and/or fail to provide a written determination of the cooperative dialogue. Notably, employers found to have violated the cooperative dialogue requirement(s) may be subject to damages for back pay, emotional distress damages, attorneys' fees, and/or civil penalties up to $125,000 per violation, and up to $250,000 for a violation that is deemed willful, wanton, and/or malicious.

As a result of the foregoing, New York City employers are encouraged to update their reasonable accommodation policies and to establish a compliant procedure and training protocol for addressing requests for accommodations.

For more information about the new legislation, or this alert, please contact Keith Gutstein or Matthew R. Capobianco by email at KGutstein@kaufmandolowich.com, MCapobianco@kaufmandolowich.com, or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group.

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