

Start Talking: Employees Now Entitled to Cooperative Dialogue with Employers about Accommodations

October 18, 2018 • Legal Updates & Insights

[A recent amendment to the New York City Human Rights Law](#) (“NYCHRL”) expands employees’ rights, and requires employers with four or more employees to engage in a “cooperative dialogue” with all employees who request a reasonable accommodation in the following categories:

- (1) for religious needs;
- (2) due to a disability;
- (3) as a result of pregnancy, childbirth or a related medical condition; or
- (4) as a result of domestic violence, sex offenses or stalking.

What is a “Cooperative Dialogue”?

The Cooperative Dialogue requirement is similar to already existing [“interactive process” requirement](#) commonly applied to disability accommodations. However, this is the first law of its kind to apply to other requests for accommodations.

The new amendment now explicitly requires employers to engage in dialogues with employees for all covered reasons described within the NYCHRL. This conversation may be in person or over the phone, and can also be in writing. Employers are required to act in good faith throughout the “cooperative dialogue.” Some topics that should be covered in cooperative dialogues include:

- the employee’s accommodation needs;
- potential accommodations;
- alternatives to the accommodation requested by the employee, and;
- any difficulties that might arise if the employer grants the requested accommodations.

Once the employer and employee have completed the cooperative dialogue, the employer must provide the employee with a written final determination, identifying any accommodation that was granted or denied.

What If My Boss Denies My Accommodation Request Without Engaging in a “Constructive Dialogue”?

As of October 16, 2018, it is considered an unlawful discriminatory practice for an employer to refuse or

fail to engage in a cooperative dialogue “within a reasonable time.” Once an employer is put on notice, actual or constructive, that an employee may need an accommodation, they must engage in the cooperative dialogue.

Keep in mind that not every request for accommodation must be granted by an employer. Even under the amendment, employers may reach the conclusion that no reasonable accommodation could allow the employee to satisfy the essential qualifications of the job. However, an employer can only make this determination *after* participating in the cooperative dialogue. Employers who fail to participate in the cooperative dialogue may be precluded from arguing in subsequent litigation that the employee was incapable of performing the job requirements. Employees have a private right of action against employers that do not participate in the cooperative dialogue, meaning that they may be able to file a lawsuit in state or federal court.

Did your employer refuse to accommodate a request or refuse to engage in a cooperative dialogue? If so, call [\(212\) 257-6800](tel:(212)257-6800) or complete the form on this page to speak to an attorney who can advise you of your legal rights and answer any questions you may have.

Hilary J. Orzick*Associate***WIGDOR LLP**

85 Fifth Avenue, New York, NY 10003

T: [\(212\) 257-6800](tel:(212)257-6800) | F: [\(212\) 257-6845](tel:(212)257-6845)horzick@wigdorlaw.comwigdorlaw.com[Privacy Policy](#) | [Disclaimer](#)