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Change In New York State Law Dramatically Expands Businesses' Obligations To Customers, Patrons And Patients With Disabilities

Effective January 1, 2008, an amendment to the New York Human Rights Law ("NYHRL") will significantly expand a public accommodation's obligations to persons with disabilities. Public accommodations include an array of private businesses that open their doors to the public, such as hotels, retail stores, restaurants, professional services offices, health care facilities, theaters, and child care centers. Prior to the amendment, the NYHRL only prohibited public accommodations from denying a person any of the "accommodations, advantages, facilities or privileges" because of the person's disability. The amendment expands the law to require public accommodations to take affirmative steps to ensure that people with disabilities have access to their goods and services. Such affirmative steps include: (1) making reasonable modifications in policies, practices, or procedures or providing auxiliary aids and services to people with disabilities so that they can have access to a public accommodation's goods and services; and (2) removing architectural, communication, and transportation barriers that prevent people with disabilities from enjoying the goods and services of a public accommodation if the removal is "readily achievable."

For example, as an auxiliary aid or service, a health clinic may have to provide a sign-language interpreter, free of charge, to communicate important information about a serious medical diagnosis to a patient who is deaf. Retailers will have to make sales associates available to assist customers in wheelchairs who cannot access items that are out of reach. Restaurants will have to ensure that they have ways of effectively communicating their menu offerings to customers who are blind or have sight impairments (e.g., large-print menus or servers describing the available choices). Web site accessibility for the blind is another potential issue.

Examples of architectural barrier removal that may be required include installing ramps and curb cuts, creating designated accessible parking spaces, installing grab bars in restrooms, rearranging toilet stall partitions to create an accessible stall, reconfiguring other restroom elements, and widening doorways and paths of travel so wheelchairs can pass. The obligation to remove barriers where readily achievable applies

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to all public accommodation facilities regardless of when they were constructed and arises on the law's effective date, January 1, 2008 – not when alterations/renovations are made. However, barrier removal may not be required if it is very difficult or expensive relative to a business's resources.

A person who is harmed by a violation of the NYHRL can obtain relief by filing a complaint with the New York State Division of Human Rights, or a lawsuit in court. The available relief includes injunctive relief, compensatory damages, and attorneys' fees.

Although the obligations created by the amendment closely track the federal requirements of the Americans with Disabilities Act (ADA), there are some significant differences. First, the ADA only applies to owners and operators of a public accommodation and their landlords. The requirements of the NYHRL, in contrast, also apply to managers, employees, and agents of a place of public accommodation. Second, the NYHRL's definition of the term "disability" is broader than the ADA's definition. As a result, more people will qualify as having a "disability" under the NYHRL which would entitle them to protection and accommodations under the law. Third, as noted, plaintiffs can recover monetary damages under the NYHRL in addition to injunctive relief and attorneys' fees. The ADA does not provide for monetary damages.

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If you have any questions concerning this amendment to the New York Human Rights Law, please contact Minh N. Vu at (202) 861-1841 or mvu@ebglaw.com, or Frank C. Morris, Jr., at (202) 861-1880 or fmorris@ebglaw.com. Ms. Vu and Mr. Morris are co-directors of the Disability Practice Group at Epstein Becker & Green and have extensive experience with the ADA and state disability laws.

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

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