

## Legislative Update

***December 2014***

**Additional information will be forthcoming related to any required change in Matrix's process, practice, written or verbal employee communications as a result of these new laws.**

### ***Arkansas – Special Election in Fayetteville May Impact Local Employers***

A special election has been scheduled for December 9<sup>th</sup>, the outcome of which may overturn the recently passed Civil Rights Ordinance in Fayetteville, Arkansas. The ordinance (Ordinance 119) was passed in August, and expanded Civil Rights protections in several areas, including terms, conditions and privileges of employment. The protected classes extended to real or perceived incidents of discrimination based upon race, ethnicity, national origin, race, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability and veteran status. Many other U.S. cities currently have similar ordinances in place.

More information and text of the ordinance can be found at:

<http://www.accessfayetteville.org/government/mayor/documents/Chapter%20119%20Civil%20Rights%20Ordinance%20%26%20Administration%20Revised%20.pdf>

A list of cities with similar ordinances can be found at: <http://www.hrc.org/resources/entry/cities-and-counties-with-non-discrimination-ordinances-that-include-gender>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to the leave management program.**

### ***Reminder! New Jersey – Sick Leave Law Becomes Effective for Four Municipalities in January 2015***

Four New Jersey municipalities will have sick leave ordinances going into effect during January 2015. Passaic, East Orange, Irvington, and Paterson will each have mandated sick leave requirements for employers beginning next month.

For more information: <http://www.davidrichlaw.com/new-york-business-litigation-and-employment-attorneys-blog/2014/11/four-more-new-jersey-municipalities-enact-laws-mandating-paid-sick-leave-for-workers/>

The Passaic Ordinance can be found at:

<http://ecode360.com/documents/PA1001/source/544997.pdf#search=sick>

The East Orange Ordinance can be found at: <http://www.eastorange-nj.gov/Departments/CityClerk/PDF/Ordinance%20No.%2021%20of%202014.pdf>

The Irvington Ordinance can be found at: <http://ecode360.com/documents/IR0792/source/541588.pdf>

More information regarding the Paterson Ordinance can be found at: [http://www.nj.com/passaic-county/index.ssf/2014/09/paterson\\_becomes\\_fifth\\_nj\\_city\\_to\\_pass\\_paid\\_sick\\_leave\\_law.html](http://www.nj.com/passaic-county/index.ssf/2014/09/paterson_becomes_fifth_nj_city_to_pass_paid_sick_leave_law.html)

**IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to leaves managed by Matrix as these are sick pay policies.**

### ***Reminder! Illinois – Human Rights Act Become Effective on January 1st***

Changes in the Illinois Human Rights Act will take effect on January 1, 2015, and significantly enhance the obligation of employers to make accommodations for pregnancy. The Act will require, “reasonable modifications or adjustments to the job application process or work environment, or to the manner or circumstances under which the position desired or held is customarily performed, that enable an applicant or employee affected by pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth to be considered for the position the applicant desires or to perform the essential functions of that position.” Employers may still rely on the “undue hardship” defense.

For more information: <http://www.xperthr.com/news/illinois-to-require-reasonable-accommodations-for-pregnant-workers/13793/>

**IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to leave programs but if Matrix is managing your ADA Accommodations program we will incorporate these into the process.**

### ***Reminder! Amendments to Connecticut Paid Sick Leave Act of 2012 Become Effective Jan. 1st***

An amendment to the Connecticut Paid Sick Leave Act of 2012 will go into effect on January 1, 2015. The amendment provides new rules for determining the fifty (50) employee threshold in establishing coverage under the Act. The changes will make it more difficult for employers to manipulate the workforce through payroll actions, transfers, or terminations of employees. The amendment also provides for greater flexibility of timeframes to determine the accrual of sick leaves.

More information about the legislation can be found at: <http://www.natlawreview.com/article/connecticut-employer-alert-changes-to-paid-sick-leave-requirements-effective-january>

**IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to leaves managed by Matrix as this is a sick pay policy.**

## **Notable EEOC Disability News:**

EEOC FY 2014 Performance Report now available at: <http://eeoc.gov/eeoc/newsroom/release/11-18-14.cfm>

EEOC v. Angel Medical Center, Inc. at: <http://eeoc.gov/eeoc/newsroom/release/11-24-14.cfm> (Hospital accused of failing to make accommodations for employee suffering from cancer, ultimately terminating employee).

EEOC v. Disability Network at <http://eeoc.gov/eeoc/newsroom/release/11-26-14.cfm> (A deaf employee was denied accommodations and ultimately fired).

## **Notable Cases**

### ***Gardner v. Detroit Entertainment, LLC, E.D. (Michigan) S.D. Case No. 12-14870 (October 15, 2014)***

A casino employee exercised the right to intermittent FMLA leave multiple times during a period of several years. A third-party plan administrator eventually sent a notice of recertification to the employee via email. The employee contended that she did not receive/open the email, therefore, never receiving notice of a need for recertification. The administrator sent another letter of non-compliance and the company ultimately terminated the employee. The employee brought suit alleging interference and retaliation claims based upon FMLA rights.

The Court made a distinction between oral notice and email notice. The Court provided that oral notice provides actual notice, whereas there is not guarantee that notice has been received via email.

In light of the recent decision in *Lupyan*, it should be abundantly clear to employers that there is a significant burden on employers to prove compliance with FMLA notice requirements when making employment decisions or taking disciplinary actions. Employers must verify that policies and procedures provide proof of notice.

The case can be found at: <http://www.fmlainsights.com/wp-content/uploads/sites/311/2014/10/Gardner-v-Detroit-Entertainment.pdf>

### ***Gillman v. Okaloosa County, N.D. Fla., Case No. 3:13cv61-MCR/EMT, N.D. (September 30, 2014)***

A correctional officer was injured while at work when her thumb became lodged in a hydraulic door. The employee was off work on FMLA leave and eventually had surgery for the injury. The employee attempted to return to work multiple times, requesting a light-duty assignment. The employer refused to permit her return to work, claiming that there was no (nor had there ever been) any form of light-duty assignments. After the employee was unable to return to work in her full capacity after utilizing approximately 180 days of FMLA leave, she was terminated.

The employee brought suit, alleging interference with FMLA rights, as well as retaliation for exercising FMLA rights and state law workers' compensation rights.

The Court granted summary judgment for the employer, finding that the employer provided sufficient evidence to prove that light-duty was not available, nor that the employer was obligated to provide the employee a different job. Further, the Court determined that the employee provided insufficient evidence to prove interference, retaliation or pretext.

The decision can be viewed at:

[http://scholar.google.com/scholar\\_case?case=10191424839648085360&q=gillman+v.+okaloosa&hl=en&as\\_sdt=6,36&as\\_vis=1](http://scholar.google.com/scholar_case?case=10191424839648085360&q=gillman+v.+okaloosa&hl=en&as_sdt=6,36&as_vis=1)

Noteworthy News Brief:

***Surge in FMLA Lawsuits Creates Challenges for Employers***, Andrea M. Kirshenbaum, *The Legal Intelligencer* at:

<http://www.thelegalintelligencer.com/latest-news/id=1202677554190/Surge-in-FMLA-Lawsuits-Creates-Challenges-for-Employers?mcode=1395262324557&curindex=10>

This news brief provides data regarding the numerical increases in the number of FMLA claims being filed against employers annually.

**Additional information will be forthcoming related to any required change in Matrix's process, practice or written or verbal employee communications as a result of these new laws.**

### ***What You Need to Do:***

***Reliance Standard and Matrix are committed to keeping our clients informed and in compliance. We will provide updates on meaningful changes - and how they may affect our clients – as necessary. In the interim, for more information on how to manage productivity in the face of this and other employee leave legislation, contact your sales representative or account manager.***

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