

## Legislative Update

*February 2016*

Check out the latest posts about the FMLA and ADA on [Matrix-Radar.com](http://Matrix-Radar.com)



[\*Caution, Joint Employers: The DOL is Looking for YOU!\*](#)

[\*ADA Accommodations – Reassignment Redux\*](#)

[\*Court to EEOC: “Teamwork” Does Not Replace Performing Essential Functions of Position\*](#)

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.

### ***New York – New York City Expands NYCHRL***

In a move that can have an impact on employees taking FMLA leave; New York City has expanded the New York City Human Rights Law to prohibit employment discrimination against caregivers. The amendment will take effect on May 4, 2016, and applies to employers with four (4) or more employees. This may significantly impact an employer’s obligation to accommodate those that fall within the classification of “caregiver.”

A caregiver is defined as, “a person who provides direct and ongoing care for a minor child or a care recipient.” Covered relatives include children, adopted children, biological children, foster children, spouse, domestic partner, parent, sibling, grandchild, grandparent, children or parents’ of the caregiver’s spouse or domestic partner, or any individual in a familial relationship with the caregiver. As the definition of “covered relative” is broad, and there is much latitude in the interpretation of the term, employers would be wise to review the changes to make sure that employment policies are in compliance. Penalties are significant, with a maximum fine of \$50,000.00. There is also a \$100 per day penalty for continuing violations.

**Impact on FMLA Users.** One of the reasons an eligible employee can take FMLA leave is to care for a family member with a serious health condition, which may qualify the employee as a “caregiver” under the new New York City law. So, in addition to FMLA protections against interference with or retaliation for taking such leave, NYC employees now also have similar protections with significant penalties under local law.

Information regarding the amendments can be found at: <http://www1.nyc.gov/office-of-the-mayor/news/010-16/mayor-de-blasio-signs-legislation-expanding-new-york-city-human-rights-law-protect> see also: [http://www.nyc.gov/html/cchr/downloads/pdf/2015\\_EndofYearStats\\_Release.pdf](http://www.nyc.gov/html/cchr/downloads/pdf/2015_EndofYearStats_Release.pdf) and <http://www.mondaq.com/unitedstates/x/462642/employee+rights+labour+relations/New+York+City+Expands+Human+Rights+Law+to+Prohibit+Employment+Discrimination+Against+Caregivers>

**IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to current Matrix processes; we do not manage city or county laws.**

## ***Vermont – Paid Sick Leave Pending***

The Vermont Senate Committee on Economic Development has passed a bill for paid sick leave. The House has already passed the measure. The matter will now be voted on by the full Vermont Senate. All employers would be covered under the Act. Full-time employees would receive three days of paid sick leave per year, expanding to five days after the third year. Part-time employees would accrue benefits upon working 18 hours weekly. There are special rules for temporary workers, and employees under the age of 18 are exempt.

Employers should closely monitor developments regarding the matter.

Additional information can be found at:

<http://www.wptz.com/news/legislation-to-guarantee-paid-sick-leave-to-most-vermont-workers-to-advance/37673896>

**IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to current Matrix processes; Matrix does not manage accrued sick policies.**

## ***Washington - Seattle Paid Sick Leave Rights Become Effective in April***

Seattle significantly amended its sick leave ordinance, even providing a private cause of action for adverse employer actions regarding sick leave rights. The amendment provides a three-year state of limitations for sick leave violations; two times actual wages for liquidated damages; potential employer penalties of \$5,000-\$20,000; and up to \$1,000 for notice violations.

The amendments also require employers to provide sick leave use in quarter-hour increments unless to do so would not be feasible. As these amendments significantly increase the penalties for employer violations, and enhance employee rights, employers would be wise to review the changes.

The amendments become effective on April 1, 2016, for employers with 50 or more employees, and on April 1, 2017, for other employers.

Additional information regarding the Seattle ordinance can be found at:

<http://www.seattle.gov/laborstandards/paid-sick-and-safe-time>

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## ***Puerto Rico – Amended Paid Sick Leave Law Now in Effect***

Puerto Rico House Bill 695 amended Puerto Rico Act. No. 180 of 1998, and is now in effect. The amendment provides that non-exempt employees may use paid sick leave to care for family members and others for up to five (5) days for care or illness of an employee's child, spouse, mother or father; or, the care or by reason of illness of minors, persons of advanced age, or disabled persons of which the employee has custody or is the legal guardian. Employers operating in the jurisdiction would be wise to review the amendments.

More information can be found at: <http://www.natlawreview.com/article/governor-puerto-rico-signs-bill-to-expand-paid-sick-leave-use>

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## **Reminder! New Jersey –Elizabeth Paid Sick Leave Changes Become Effective March 2nd**

Elizabeth employers must comply with Paid Sick Leave Ordinance 4617, which will go into effect March 2, 2016. As a result, private sector employers with ten or more employees must provide up to 40 hours of paid sick leave per year, while smaller private-sector employers may provide up to 24 hours of paid sick leave. Employees will earn one hour of paid sick leave for every 30 hours worked.

To review the Jersey City Ordinance:

[http://www.cityofjerseycity.com/uploadedFiles/Public\\_Notices/Agenda/City\\_Council\\_Agenda/2015/2015\\_Ordinance\\_2nd\\_Reading/Agenda%20Document\(19\).pdf](http://www.cityofjerseycity.com/uploadedFiles/Public_Notices/Agenda/City_Council_Agenda/2015/2015_Ordinance_2nd_Reading/Agenda%20Document(19).pdf)

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## **Tacoma, Washington – Paid Sick Leave Now in Effect**

Effective February 1, 2016, all full-time, part-time and temporary employees working in Tacoma are entitled receive one (1) hour of paid sick leave for every 40 hours of work. Employees may earn up 24 hours of sick leave per year, with carry-forward provisions that permit the use of up to 40 hours in a given year. Employers operating in Tacoma, Washington should review the link provided below.

The Paid Leave Rules can be found at: <http://www.cityoftacoma.org/cms/one.aspx?objectId=75860>

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## **Notable EEOC Disability News:**

*EEOC v. Downriver Community Services, et al. Case No. 4:15-cv-13060 (ADA – Disability Discrimination) (Downriver paid \$31,000 and agreed to other extensive remedies such as training after the EEOC sued the company, alleging that Downriver refused to extend additional unpaid leave to a peer counselor after surgery for a herniated disc, fired her based on her disability, and then refused to rehire her)* <http://www.eeoc.gov/eeoc/newsroom/release/1-20-16a.cfm>

*EEOC v. NHC Healthcare, LLC, Civil Action No.6:15-cv-02584-MGL-KFM (ADA, PDA) (NHC Healthcare, a provider of various medical services, paid \$50,000 and agreed to other extensive remedies after it was sued by the EEOC; EEOC alleged that NHC refused to provide a leave of absence as an accommodation for a pregnant employee and subsequently fired her because of her disability and pregnancy)* <http://www.eeoc.gov/eeoc/newsroom/release/1-25-16b.cfm>

## **Notable Case**

### ***Employer had reasonable grounds under the ADA to determine that employee was not “qualified” for his position***

*Michael v. City of Troy Police Department; City of Troy, 6<sup>th</sup> Cir. No. 14-2478 (Dec. 14, 2015)*

Employee Todd Michael began working as a patrol officer in 1987. In 2000, he was diagnosed with a non-cancerous brain tumor. The employee had surgeries for the condition in 2000 and 2001. He was placed on paid leave for each surgery and returned to the force immediately after receiving medical clearance.

Beginning in 2007, the City became aware of aberrant behavior from the employee. While the city was investigating the matter, the employee advised the City in early 2009 that he would need an additional brain surgery. The surgery took place and the employee was cleared by his physician to return to work in July 2009.

Ultimately, the City decided to keep the employee on unpaid leave. The employee subsequently filed an ADA claim, alleging that the City regarded him as being disabled and discriminated against him on that basis. The District Court granted summary judgment for the City, determining that the employee was not qualified for the position. The employee appealed the decision. The 6<sup>th</sup> Circuit Court of Appeals affirmed the lower court's decision. The Court focused on whether the employee was a “qualified individual” as required under the ADA and looked at two specific aspects of the City's evidence.

First, the court looked to the multiple medical opinions regarding the employee's inability to perform his job, some of which indicated he could work and others which disagreed. Recognizing that the City had substantial but conflicting medical opinions, the court stated: “Right or wrong, the opinions upon which the City relied were objectively reasonable.”

Second, the Court noted that the City's decision was not based on the medical information alone, but also upon testimony and evidence regarding the employee's aberrant behavior. Specifically, the City introduced evidence that the plaintiff had tape-recorded several conversations, including his marriage counseling sessions and conversations with his employer. He attempted to have his former wife prosecuted for perjury, He possessed empty steroid vials with labels in foreign languages and marked “for veterinary use only,” sued his employer for the return of the vials after they were taken from him, and tried to serve his supervisor with process at the supervisor's retirement party. There was also testimony submitted that the employee accompanied a drug dealer to several drug deals.

The Court determined that the actions of the City in this case were objectively reasonable and upheld the City's termination of the employee as not “qualified” for the position of police officer. Employers should note the substantial amount of evidence and documentation that the City provided the Court in this case to support its decision and process.

This ruling can be found at: <http://www.ca6.uscourts.gov/opinions.pdf/15a0291p-06.pdf>

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#### ***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.***