

## Legislative Update

***November 2015***

**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.**



### ***Announcing MATRIX-RADAR.COM***

***Adventures in Absence Management and Accommodations  
Sign up today! Frequent new posts as developments warrant***

We are excited to announce our new Matrix blog and invite you to check it out at [www.matrix-radar.com](http://www.matrix-radar.com). Topics will include FMLA and state leave laws, ADA and state equivalents, guidance on accommodations (including pregnancy issues), workers' compensation, and other timely subjects. We will keep you up to date on:

- New or amended leave of absence or accommodation laws and regulations
- Analysis of significant cases
- Developments from the U.S. Department of Labor and the Equal Employment Opportunity Commission
- Employer pointers and best practices
- Answers to tough absence and accommodation questions
- And more . . .

Our lead blogger is Marti Cardi, Matrix's vice president in charge of product compliance. Marti's 30+ years of experience in employment law and absence management make her the perfect commentator for compliance developments and best practices. Watch for periodic guest bloggers, too! And, let us know what YOU want to hear about.

## California – Amendments to 3 leave-related laws go into effect in 2016; 2 others vetoed

### Family-School Partnership Act

The FSPA allows an employee who has custody over a child in grades K-12 or in child care to take up to 40 hours per year off to attend certain school-related functions. The law applies to employers with 25 or more workers at the employee’s location. An October 11 amendment, effective January 1, 2016, expands the covered parental relationships and the applicable leave reasons under the law.

Provision	Current	Addition Effective 1-1-2016	Comments
Covered relationships	Parent, guardian, or a grandparent with custody	Stepparent, foster parent, grandparent, or a person who stands in loco parentis to the child	
Leave reasons	To participate in activities of the school or licensed child day care facility	<ul style="list-style-type: none"> <li>– To find, enroll, or reenroll the child in school or a licensed child care provider</li> <li>– To address a child care provider or school emergency</li> </ul>	Examples of covered activities include volunteering in the classroom; parent–teacher conferences, Back-to-School Night, field trips, and extracurricular sporting events
Schools covered	“Licensed child day care facility”	“Licensed child care provider”	

Note that the FSPA has additional provisions relating to employee notice, documentation, use of PTO, and other details. See Cal.Lab.Code § 230.8(a) and the FSPA brochure at

<http://www.cwa9510.org/supportfiles/members/famschoolpart.pdf>

***IMPACT TO YOUR PROGRAM WITH MATRIX: This leave law is used very little, but Matrix is working to update programming, training, and other pertinent leave management aspects with regard to the expansion of this law.***

## Kin Care

California’s Kin Care law does not create a right to time off but applies if an employer provides paid sick leave. In that case the employer must allow an employee to use one-half of the employee’s annual sick leave accrual for certain purposes other than the employee’s own illness.

Provision	Current	Addition Effective 1-1-2016	Comments
Covered relationships	Child, parent, spouse, or domestic partner of the employee	Grandparent, grandchild, and sibling	“Child” and “parent” include those with a biological, adoptive, foster, step, guardian/ward, or in loco parentis relationship with the employee
Leave reasons – use of sick leave	“To attend to an illness” of a covered family member	– Diagnosis, care, or treatment of an existing illness, or preventive care – Victim of domestic violence, sexual assault, or stalking	Activities related to domestic violence, sexual assault, or stalking may include court appearances, medical treatment, counseling, safety measures, and obtaining victim services

**IMPACT TO YOUR PROGRAM WITH MATRIX:** *None; Matrix does not administer the types of company leaves covered by Kin Care.*

## State Disability Insurance

California’s state disability insurance program provides employees with a non-work-related injury or illness with up to 52 weeks of pay benefits at approximately 55% or the employee’s pay in the defined “base period.” Employers can elect to provide a Voluntary Disability Insurance plan, but the plan must provide benefits equal to, and greater in at least one aspect, compared to the state insurance plan. Those employers will need to consider these amendments to determine whether their plans need to be updated.

Provision	Current	Change Effective 7-1-2016	Comments
“Disability benefit period”	Periods of disability for same/related condition separated by not more than <b>14 days</b>	Periods of disability for same/related condition separated by not more than <b>60 days</b>	Will result in combining more related periods of absence into one “disability benefit period”
Waiting Period	Initial 7 days of disability period with no benefits paid	7-day waiting period does not apply for subsequent related periods of disability separated by 60 days or fewer	

**IMPACT TO YOUR PROGRAM WITH MATRIX:** *Matrix will be analyzing what, if any, changes are needed to programming, communications, and other aspects of managing California Voluntary Plan disability benefits. More communications to come well in advance of the July 1, 2016 effective date.*

## **Whew! More CFRA Amendments Vetoed**

As you may recall, California employers were kept busy updating their policies, practices, and documentation due to extensive changes to the California Family Rights Act regulations effective July 1, 2015. The California legislature attempted to keep up the pace by passing amendments to the CFRA law itself. The proposed amendments would have:

- Expanded the family relationships for which employees could take CFRA leave (adding grandparent, grandchild, parent-in-law, sibling, and child of domestic partner)
- Removed the age and dependency requirements for a “child”, thus making employees able to take CFRA leave to care for adult children
- Removed the requirement for parents employed by the same employer to share the 12 weeks of CFRA leave to bond with a child

Governor Brown vetoed the amendments to CFRA, citing concern about the possibility that with the amendments some employers would have to provide up to 24 weeks per year of CFRA leave. He left open the possibility of expansions of CFRA’s coverage if this effect can be eliminated or mitigated.

***IMPACT TO YOUR PROGRAM WITH MATRIX: Bill was Vetoed, no impact to your program.***

## **Expansion of California Paid Family Leave Vetoed**

On October 11, 2015, California Governor Jerry Brown vetoed S.B. 406, which would have expanded state paid family leave law to expand to employers with more than 25 employees rather than the current requirement of 50. More information can be found at: <http://www.sacbee.com/news/politics-government/capitol-alert/article38755236.html>

***IMPACT TO YOUR PROGRAM WITH MATRIX: Bill was Vetoed, no impact to your program.***

## **Paid Sick Leave Developments**

***NOTE ON IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix does not manage paid sick leave statutes or ordinances. These are pay practices, managed internally by the employer.***

## **Bellingham, WA Considers Paid Sick Leave**

On November 4<sup>th</sup>, Bellingham City Council held a hearing to receive public comments regarding the city’s proposed paid sick and safe leave ordinance. Under the proposal, employees would accrue one hour of paid sick leave for every 30 hours worked. Employees would be entitled to accrue up to 56 hours per year, and there are annual carry over provisions for unused leave. The proposal would take effect immediately upon passage.

The proposed ordinance can be reviewed at:

<http://www.cob.org/sirepub/agdocs.aspx?doctype=agenda&itemid=6135>

## **Elizabeth, NJ Passes Paid Sick Leave**

On November 3<sup>rd</sup>, Elizabeth, New Jersey residents overwhelmingly passed a paid sick leave ordinance, thereby making the municipality the tenth in the State of New Jersey to pass such legislation. The ordinance will go into effect 90 days after the date of passage.

Private sector employers with ten or more employees will provide up to 40 hours of paid sick leave per year, while smaller private-sector employers will provide up to 24 hours of paid sick leave. Employees will earn one hour of paid sick leave for every 30 hours worked.

For more information: [http://www.nj.com/union/index.ssf/2015/11/elizabeth\\_voters.html](http://www.nj.com/union/index.ssf/2015/11/elizabeth_voters.html)

See also: <http://unionnewsdaily.com/news/21159>

## **Pittsburgh, PA Passes Paid Sick Leave**

The Pittsburgh Paid Sick Days Act will become effective on January 11, 2016, and will require employers to provide paid sick leave to all full-time and part-time employees. Employers with 15 or more employees must provide up to 40 hours of paid sick leave, while smaller employers must provide up to 24 hours of paid sick leave per year. Employees will accrue one hour of paid sick leave for every 35 hours worked.

There are notification requirements, the failure of which will result in a fine for employers. Employees may begin using accrued sick leave after 90 days of employment for illness or medical treatment of themselves or a family member. The term “family” is defined broadly under the ordinance, including even grandchildren, grandparents, domestic partners, and children of domestic partners.

State and federal employees, seasonal employees, independent contractors, and members of construction unions covered by a collective bargaining agreement are exempt from the ordinance. Employers would be wise to review the ordinance before implementation to make sure that current policies will comport with compliance requirements.

The Pittsburgh Paid Sick Days Act can be found at:

<https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=2448366&GUID=2652EE86-BB8B-45A1-AFF8-8FE280C9669B&Options=ID%7cText%7c&Search=paid+sick+days>

See also:

<http://www.shrm.org/legalissues/stateandlocalresources/pages/pittsburgh-paid-sick-days-act.aspx>

## **Notable EEOC Disability News:**

*Equal Employment Opportunity Commission v. DAP Products, Inc.*, Civil Action No. 3:15-cv-3423-D (ADA – Forcing an Employee to Take Extended Leave) (employer refused to allow a capable cancer-stricken employee to return to work and subsequently fired him because of his disability): <http://www.eeoc.gov/eeoc/newsroom/release/10-22-15a.cfm>

*EEOC v. Safeway Inc.*, (ADA – Failure to Accommodate) (employer initially accommodated employee's disability by reassigning her to work at customer service desk but then placed her on unpaid, indefinite leave, claiming she had exhausted her time limit for modified duty; employer then terminated employee rather than allowing her reasonable accommodation of continued work at service desk): <http://www.eeoc.gov/eeoc/newsroom/release/10-1-15a.cfm>

*EEOC v. Cosmic Concepts, Ltd., t/a Media Star Promotions*, Civil Action No.1:15-cv-02975-CCB (ADA – Failure to Accommodate) (employer refused to accommodate employee's disability, improperly asked her to sign a form purporting to waive her rights under the ADA, then terminated her): <http://www.eeoc.gov/eeoc/newsroom/release/10-2-15a.cfm>

## **Notable Case**

*Amstutz v. Liberty Center Board of Education*, Case No. 3:13-CV-2385 ( N.D. Ohio, September 9, 2015)

### ***FMLA? No, no, no! The employee does NOT get to choose!***

According to the US Department of Labor, an employee *does not get to choose* whether to count a qualifying absence as FMLA or not. But recently, another court got it wrong. In *Amstutz v. Liberty Center Board of Education*, an unfortunate decision for employers in general, an Ohio federal court ruled that an employee can affirmatively decline to use FMLA leave even where the reason for leave would have triggered FMLA protections.

So here are your questions: What are the facts of the case? The basis of the court's ruling? When has the DOL spoken on this issue? Why is this an unfortunate decision for employers when the employer actually won this case? And, what lessons should employers take from this case and the DOL's position?

We covered this case in our new blog, Matrix-Radar.com. Please click to read [Part I](#) and [Part II](#) of our analysis, and get the answers to these questions. And, for another review of the case, check out Jeff Nowak's analysis at [FMLA Insights](#).

**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.***