

Legislative Update

March 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.

Matrix Absence Management Welcomes our New Vice President of Compliance

In our ongoing support of Service Excellence and keeping our clients compliant in the face of ever changing legislation, Matrix is pleased to introduce Marti Cardi, Esq. Vice President, Product Compliance. Ms. Cardi is a seasoned employment law attorney with extensive experience advising employers on leave of absence management in compliance with the FMLA, ADA, ERISA, and similar state and local laws. Her deep industry knowledge and consultative approach make Marti an outstanding addition to the Matrix team. Marti holds her J.D. from the University of Colorado School of Law and is current president of the Colorado chapter of the Association of Corporate Counsel.

To view the press release announcing Ms. Cardi's hire:

http://www.reliancestandard.com/SiteData/docs/CARDIRelea/6850a3538840ddf9/CARDI_Release.pdf

Philadelphia, Pennsylvania – Mayor Signs Paid Sick Leave Bill

On February 12, 2015, the Philadelphia Mayor signed the Promoting Healthy Families and Workplaces Bill, providing for paid sick leave for approximately 200,000 employees in Philadelphia. The bill will become effective May 13, 2015. The ordinance provides for the accrual of one (1) hour of paid sick leave for every forty (40) hours worked. The ordinance specifically excludes independent contractors, seasonal employees, adjunct professors, employees hired for a term of less than six (6) months, interns, pool employees, State and Federal employees, and employees covered by a bona fide collective bargaining agreement.

The ordinance also extends to leave for issues related to domestic violence. Employers with less than ten (10) employees must also grant leave, but the leave can be unpaid for these small employers. The ordinance also provides for notice and posting requirements.

For more information or to review the text of the ordinance:

<https://phila.legistar.com/LegislationDetail.aspx?ID=2101250&GUID=5D12D54D-B1A7-4446-B646-95BE528F771C&Options=ID|Text|&Search>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix does not manage the "pay" associated with this leave type. If the employee does require a leave that meets the requirements of Federal or State leave laws, the leave will be managed by Matrix as a FMLA and/or State Family Leave entitlement.

DOL – Final Rule Defining Spouse under the FMLA

The Department of Labor (DOL) has issued its Final Rule amending the regulatory definition of “spouse” under the FMLA. The effective date for the new rule is March 27, 2015. The DOL has changed from a “state of residence” rule to a “place of celebration” rule. As a result of the change, eligible employees under the FMLA in a same-sex marriage legally recognized by any state will be afforded FMLA rights regardless of the marriage laws of the state where they live. The change is intended to provide the same federal leave rights for all individuals in a legally recognized marriage, whether opposite-sex, same-sex, or common law, including those validly entered into outside of the United States.

The amended regulation still does not provide FMLA leave rights to care for a domestic or civil union partner with a serious health condition. Employers must look to state leave laws to determine whether such couples have job-protected leave for this purpose.

For more information: <http://www.dol.gov/whd/fmla/spouse/>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix will track FMLA leave for “spouses” as defined by the “state of celebration”.

Next Month! Massachusetts – Parental Leave Bill Going Into Effect

The Parental Leave Bill, amending the Massachusetts Maternity Leave Act, will go into effect on April 7, 2015. The Act extends the right of up to 8 (eight) weeks of job-protected leave to male employees for matters relating to birth or adoption of a child. The original legislation provided rights to females only. The amendment also provides leave rights to both male and female employees for the placement of a child pursuant to a court order.

Leave becomes available after three (3) months of employment, though employers may determine whether the leave is paid or unpaid. The Act also provides for posting and notice requirements, including special notice requirements for employers that will provide more than eight (8) weeks of leave. The Act pertains to all employers with six (6) or more employees.

For more information: <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/employmentleave.html>
see also <http://www.natlawreview.com/article/massachusetts-governor-signs-parental-leave-bill>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix will update the programming in the management system to account for this new state leave; examiners will be trained on the new state leave law and the eligibility rules.

The policy name will change to “MA Parental Leave”, and will be linked to Pregnancy, Newborn and Adoption leaves.

If the mother gives birth to multiple children (twins, etc) or adopts more than one child at once the parent employee is entitled to 8 weeks of leave per child. If an employee schedules her maternity leave to begin before her expected delivery date, the MA Parental Leave will begin from first date of leave.

Reminder! Oakland – Paid Sick Leave Ordinance in Effect March 2nd

Under the provisions, employees working for organizations with more than ten (10) employees may be eligible for up to nine (9) paid sick days per year, while smaller employers may have to provide up to five (5) sick days. Sick time will begin accruing for employees on March 2, 2015. Similar to other sick leave legislation, employees may earn one (1) hour of sick leave for each thirty (30) hours worked.

For more information: <http://www.wagehourinsights.com/state-regulation/wage-and-hour-2014-election-results-roundup-minimum-wage-paid-sick-leave-big-winners/>

IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact. Matrix does not manage the “pay” practices in specific jurisdictions.

Notable EEOC Disability News:

EEOC v. St. Alexius Medical Center of Hoffman Estates (ADA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/2-12-15b.cfm> (\$125,000 settlement paid by employer on ADA failure to accommodate claim.)

EEOC v. Valley Life (FMLA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/2-26-15.cfm> (Suit filed by the EEOC against a disability support services company for alleged violations of the ADA. The company had an inflexible leave policy and routinely terminated employees with disabilities after exhaustion of FMLA and/or other leave entitlements.)

EEOC v. Wal-Mart (ADA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/2-19-15.cfm> (Wal-Mart agreed to pay \$150,000 to settle an ADA and age discrimination suit; Wal-Mart failed to engage in the interactive process with the employee who had requested a job transfer to a lower position to better accommodate his diabetes.)

Notable Case

Ameen v. Amphenol Printed Circuits, Inc., 1st Cir., No. 14-1086 (Jan. 26, 2015)

The plaintiff, a long-term employee, requested a few weeks of FMLA time for the birth of a child. The employee subsequently requested personal leave so that he could travel outside of the country. While examining the employee's work history when considering his leave requests and performance, the company discovered that the employee had been taking an extra 1.25 hours of lunch time per week for a significant period of time. The organization ultimately terminated the employee, and the employee filed suit alleging retaliation for his use of FMLA leave, as well as the refusal to work overtime to be with his family.

In upholding the District Court's granting of summary judgment, the Appellate Court held that the plaintiff failed to provide evidence of retaliatory animus or pretext. The Court indicated that the plaintiff would have to prove specific retaliatory animus on the part of the decision-maker, or an employee that purportedly manipulates the decision-maker into acting as his "cat's paw."

Employers would be wise to review this case as the court provides the framework for analyzing these types of claims, especially when the employer has a legitimate reason for termination, but is nevertheless accused of an FMLA violation.

The opinion can be found at: <http://cases.justia.com/federal/appellate-courts/ca1/14-1086/14-1086-2015-01-26.pdf?ts=1422304207>

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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.