RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

June 2016

California State Disability Insurance Changes Go into Effect July 1 , 2016, and January 1, 2017

Changes to the California statutory short-term disability insurance program are must-know developments for employers who provide California disability insurance through a voluntary plan. While these are not momentous changes, they do require employers to revise their voluntary plans to comply by the effective dates noted below.

Change of time between related disability periods (SB 667). California disability insurance provisions require a disabled employee to serve a waiting period of 7 consecutive days for each disability benefit period, during which waiting period no disability benefits are paid. Existing law provides that if an individual receives two consecutive periods of disability benefits due to the same or a related cause or condition and separated by not more than 14 days, they are considered as one disability benefit period. Effective July 1, 2016:

- the period of time between claims for the same or a related cause or condition to be considered one disability benefit period is increased from 14 to 60 days; and
- the 7-day waiting period is waived for an individual who has already served the 7-day waiting period for the initial claim when that person files a subsequent claim for disability benefits for the same or a related condition within 60 days after the initial disability benefit period.

This change will apply to claims filed on or after July 1, 2016. Claims filed prior to that date will continue to be administered according to the 14-day rule.

Addition of Physician Assistants (SB 1083). Effective January 1, 2017, physician assistants are included as practitioners qualified to certify a disability for purposes of California disability insurance. Voluntary plans must match this provision by the effective date. Voluntary plans can add PAs as qualified practitioners sooner but this will not count as a "greater benefit" required of voluntary plans in the interim.

IMPACT TO YOUR PROGRAM WITH MATRIX: We have been in touch with all of our clients for whom we administer a California voluntary plan. Most have opted to add the physician assistances early and go through only one plan change at present. We are updating all plans and providing training to our staff to implement these changes by July 1.

EEOC Releases Resource Document on Leave of Absence as an Accommodation under the Americans with Disabilities Act

On May 9th the EEOC released a publication it called a "Resource Document," which outlines the EEOC's position on leaves of absence as a reasonable accommodation under the ADA. The new document does not add or change existing EEOC interpretations and guidance but pulls all such information together in one handy resource. Key topics include contact with an employee's provider, maximum leave and 100% healed policies, Reassignment as an accommodation, and undue hardship. The document is loaded with examples that illustrate the EEOC's view of the issues.

We blogged about this development on *Matrix Radar* in a post on May 10th. To read the *Matrix Radar* blog post summarizing the Resource Document and providing important pings for employers, please see:

http://matrix-radar.com/2016/05/leave-as-ada-accommodation-eeoc-releases-new-resource-document-but-nothings-new/

To read the complete EEOC Resource Document: https://www.eeoc.gov/eeoc/publications/ada-leave.cfm.

MATRIX CAN HELP! Matrix's **ADA Advantage** leave management system and our dedicated ADA accommodation team helps employers maneuver through the accommodation process. We will initiate an ADA claim for your employee, conduct the medical intake and analysis if needed, manage the interactive process, assist in identifying reasonable accommodations, document the process, and more. Contact Matrix at 1-800-866-2301 to learn more about these services.

Wisconsin – New Leave Rights for Organ Donors

Effective July 1, Wisconsin employers will be required to provide eligible employees with up to 6 weeks of unpaid leave for the purpose of undergoing a bone marrow or organ donation procedure, and to recover from the procedure. This leave does not run concurrently with the leave under the Wisconsin Family Medical Leave Act ("WFLA"), so the 6-week leave is in addition to leave an employee may take for other reasons under Wisconsin law such as the employee's own serious health condition, care of a family member, and bonding. However, it does have many similar provisions, including the employer's right to request certification of the need for leave, the employee's right to continued health insurance coverage during his or her leave, and the employee's right to be restored to his or her position upon returning from leave.

The legislation and all of its provisions can be found at: http://docs.legis.wisconsin.gov/2015/related/proposals/sb517

IMPACT TO YOUR PROGRAM WITH MATRIX: This law is being added to the state leave laws managed by Matrix Absence Management. Matrix will be prepared to assist Wisconsin employers with managing leave requests under the Wisconsin Bone Marrow and Organ Donation Leave Law.

Minneapolis – City Council Passes Paid Sick and Safe Time Ordinance

Effective July 1, 2017, employees working in Minneapolis will earn one hour of paid sick leave for every thirty hours of work. Employees will accrue up to 48 hours annually, and may carry over a maximum of 80 hours. Minneapolis Paid Sick Leave may be used when the worker or a family member is sick; for physical and mental illnesses or injuries; and for medical appointments. In cases of domestic abuse, sexual assault or stalking, time could be taken for treatment, counseling, relocation or legal proceedings.

The ordinance can be found at: http://www.govdocs.com/minneapolis-st-paul-paid-sick-leave-ordinances/. Additional information can be found at: https://www.minnpost.com/politics-policy/2016/05/minneapolis-approves-landmark-paid-sick-leave-law

IMPACT TO YOUR PROGRAM WITH MATRIX: No change to Matrix programs. Matrix does not currently manage city or county ordinances.

Reminder – Los Angeles Paid Sick Leave Ordinance

The Los Angeles City Council voted in favor of adopting a paid sick leave ordinance which, if approved, would provide six days of paid sick leave per year, with carry-over of 72 hours. The City Attorney has been instructed to draft the ordinance, which could go into effect for employers with more than 25 employees early as July 1, 2016. Employers conducting business in the Los Angeles area would be wise to monitor developments.

For more information: http://labusinessjournal.com/news/2016/apr/19/l-council-passes-paid-sick-leave-policy/ See also: https://www.mwe.com/en/thought-leadership/publications/2016/05/more-paid-sick-leave

IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact to Matrix programs, city and county ordinances are not managed by Matrix.

Notable EEOC and DOL News:

Lowe's Home Improvement Settles EEOC Disability Discrimination Lawsuit for $8.6 million. The EEOC accused Lowe's of a pattern and practice of violating the ADA by terminating employees who exceeded their 180-day (and subsequently 240-day) leave of absence under company policy. To read our recent Matrix Radar blog post summarizing this case, and offering pings for employers, please click here:

http://matrix-radar.com/2016/05/lowes-to-pay-8-6-million-in-yet-another-eeoc-case-involving-inflexible-leave-policies/

EEOC v. First Call Ambulance Service, LLC., No. 3:15-cv-01041. First Call settled this lawsuit brought by the EEOC for $55,000. In the suit, the EEOC claimed that First Call violated the ADA when it declined to accommodate a pregnant employee with lifting restrictions, despite offering reasonable accommodations to other employees with such restrictions. https://www.eeoc.gov/eeoc/newsroom/release/5-27-16.cfm

DOL/MGM Resorts Int'l, dba The Mirage. Following an investigation, the DOL found that the Mirage hotel and casino resort in Las Vegas wrongfully terminated the employment of a banquet server based on his use of medical leave covered by the FMLA. The Mirage reinstated the worker one year after the termination but failed to pay him back wages for the time he would have worked, and failed to restore his pension hours and health benefits on a timely basis – all of which the law requires. The Mirage agreed with the division's findings, paid the employee $74,546 in back wages, and fully restored his seniority, pension, and health benefits. https://www.dol.gov/newsroom/releases/20160216-0

Notable Case

Legg v. Ulster County, 2nd Cir. No. 14-3636 (Apr. 26, 2016)

Plaintiff was employed as a corrections officer at the Ulster County Jail. The Jail offered light duty assignments to employees who sustained work-related injuries, but declined to do so for pregnant employees. After nearly a dozen years of employment, Plaintiff became pregnant and her pregnancy was high risk, so her doctor provided her with restrictions, including a light duty assignment. Her supervisor informed her he'd work with her and give her a light duty job, as long as she obtained a new doctor's note saying she could work without restrictions, which she did. For a short time, she was afforded the opportunity to work a light duty assignment. Following an incident when she was seven months pregnant and was bumped by inmates who were fighting, she left work and did not return until after she had given birth.

Plaintiff sued claiming, among other things, that the Jail's policy which denied light duty assignments as a reasonable accommodation violated the Pregnancy Discrimination Act. The lower court granted summary judgment to the Jail and dismissed her PDA claim. On appeal, the Second Circuit reversed, concluding that Plaintiff had brought forth sufficient evidence that a reasonable jury might find the policy of only granting light duty assignments to employees who were injured on the job created a significant burden to pregnant employees and may have been motivated by intent to discriminate against pregnant employees.

Lessons for Employers: The Pregnancy Discrimination Act prohibits discrimination against employees on the basis of pregnancy, childbirth or related conditions and requires employers to treat pregnant employees the same as non-pregnant employees who are similar in their ability or inability to work. This means in practice that employers should consider reasonable accommodations for pregnant employees, just as they would for any other employee who requests such accommodation under the Americans with Disabilities Act.

This ruling can be found at: http://caselaw.findlaw.com/us-2nd-circuit/1732847.html

What You Need to Do:

Reliance Standard and Matrix Absence Management 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.