

Legislative Update

June 2014

Women's Economic Security Act to take Effect in Minnesota

The Women's Economic Security Act may have major implications for Minnesota businesses. One area of significant impact with the new legislation will be on the expansion of leave time provided for pregnancy and parenting leave, extending the leave under state law to twelve (12) weeks of unpaid leave. The Act also provides a requirement for greater accommodations for pregnant or nursing women. Further, the Act will permit the use of sick leave for the victims of sexual assault, domestic violence, and stalking. There are also implications for grandparents desiring to take sick leave to care for the medical needs of grandchildren.

Employers would be wise to review the provisions of the Act to make sure that employment policies and practices comport with the new requirements and expanded coverage.

The Act can be found at: <http://www.mnwesa.org/wp-content/uploads/2014/05/WESA-SUMMARY-FINAL.pdf>

IMPACT TO YOUR PROGRAM WITH MATRIX: Specific state leaves associated with this act will be set up in the Matrix Tracking system and leaves can be filed using the normal process. Pay Practices associated with absences will not be managed by Matrix at this time.

Oklahoma Law Curbs Municipal Power to Grant Employee Leave

Oklahoma Governor Mary Fallin recently signed Oklahoma Senate Bill 1023 into law. The new legislation provides, "No municipality or other political subdivision of this state shall establish a mandatory minimum number of vacation or sick leave days, whether paid or unpaid, or a minimum wage rate which an employer would be required to pay or grant employees."

The legislation will curb the ability of municipalities to enact ordinances and laws relating to employee leave, as these types of ordinances have recently been enacted in some large U.S. cities. The law will go into effect on July 1, 2014.

More information about the legislation can be found at: <http://legiscan.com/gaits/search?state=OK&bill=1023>

IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact.

Leave Law Changes in Oregon in 2015?

The implementation of Portland's Paid Sick Leave Ordinance went into effect in 2014. Some believe there may be a concerted effort to expand the provisions state-wide in 2015. Employers outside of Portland would be wise to monitor the situation, and prepare for any possible political, administrative or financial implications.

For more information: <http://www.shrm.org/legalissues/stateandlocalresources/pages/ore-2014-legislative-session.aspx>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact at this time.

Maryland Parental Leave Law to Take Effect October 1st

Maryland employers will soon have to provide up to six (6) weeks of unpaid parental leave under newly signed legislation in Maryland. The legislation will take effect on October 1, 2014. The legislation may have a significant impact on small employers, as the law requires organizations with 15-49 employees to provide unpaid parental leave, impacting those employers that were previously immune from leave requirements under the FMLA.

More information regarding the matter:

http://mgaleg.maryland.gov/2014RS/fnotes/bil_0007/sb0737.pdf

IMPACT TO YOUR PROGRAM WITH MATRIX: Maryland Parental Leaves will be set up and will run concurrently with FMLA if eligible.

Vermont Legislature Declines to Enact State Leave Law

The Vermont legislature failed to act on H. 208, a proposed state sick leave law. Although in the region, Connecticut has had success with the passage and implementation of a state mandated paid sick leave law, political support of the initiative fell short in Vermont.

More information regarding the matter:

<http://www.burlingtonfreepress.com/story/news/politics/2014/05/10/adjournment/8945999/>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact.

Puerto Rico: Clarifying Law 44

The U.S. District Court for the District of Puerto Rico has recently issued a ruling regarding Law 44. Puerto Rico Law 44 is the counterpart to the U.S. Americans with Disabilities Act. The Court determined that, like the ADA, Law 44 applies only to employers, and not to individuals. Consequently, individual defendants cannot be held liable under the Law in their personal capacity.

More information regarding the interpretation of Law 44: <http://www.littler.com/global-employment-law/puerto-ricos-ada-counterpart-law-44-does-not-provide-individual-liability>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix unless Matrix is managing your ADA Process/Accommodations Leave.

Short-Time Compensation Program Beginning in Ohio

The State of Ohio received a grant from the Department of Labor to implement a short-time compensation layoff prevention program. The program will promote work-sharing, and act as an alternative to employee layoffs. Employees experiencing a reduction in hours will have pay supplemented by receiving an off-set amount of unemployment compensation.

Employers will be obligated to continue health insurance and retirement benefits, but will have also have access to the knowledge, skills and abilities of the workforce.

For more information regarding covered employers and specific provisions of the act: <http://www.dol.gov/opa/media/press/eta/ETA20140519.htm>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix. More employees could potentially not meet 1250 hours worked for FMLA if they “job share”.

Notable EEOC Disability News:

EEOC v. AutoZone, at: <http://eoc.gov/eoc/newsroom/release/5-9-14a.cfm>

EEOC v. Norfolk Southern Railway, at: <http://eoc.gov/eoc/newsroom/release/5-19-14.cfm>

EEOC v. The Cleaning Authority of Plainfield, at: <http://eoc.gov/eoc/newsroom/release/5-27-14.cfm>

Federal Contractors

The Office of Federal Contract Compliance Programs has recently made significant changes to the regulations implementing Section 503 of the Rehabilitation Act of 1973. The new regulations are designed to improve job opportunities for individuals with disabilities. The regulations prohibit federal contractors and subcontractors from discriminating against individuals with disabilities, and significantly strengthen affirmative action and record keeping obligations for employers to promote job opportunities for those with disabilities.

As these changes will significantly impact human resource operation in terms of managing leave, it is recommended that employers retain the following information related to disability-related leave. Further, employers should be prepared to provide the same to OFCCP on short notice:

1. The volume and identity of all employees requesting a disability-related leave of absence;
2. The date and reason for a disability-related leave request;
3. A categorical designation for the leave request (Mental, Pregnancy, etc.);
4. Documentation of the specific accommodation/leave requested;
5. The identity of those individuals reviewing the leave request;
6. The timeliness of the decision regarding the request for accommodation/leave;
7. Documentation of the decision itself, including an explanation as to why leave was or was not granted in the particular circumstances;
8. Documentation of any form of procedural review;
9. Information should be collected and maintained in a manner that will permit easy classification and statistical calculations for reporting purposes;
10. Information should be maintained in a central location;
11. Thoroughly document your process!

For more information regarding the language as contained in the Federal Register can be found at:

http://www.ecfr.gov/cgi-bin/text-idx?SID=039bd88dc35f767eaacdbb3530c41e5c&tpl=/ecfrbrowse/Title41/41cfr60-741_main_02.tpl

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix has a program called ADA Advantage to assist employers in the ADA Process of initiation, interactive process, documentation and follow up. If interested contact your Account Manager.

Notable Case

A Late Start May be a Reasonable Accommodation

Isbell v. John Crane Inc., N.D. Ill., No. 11-C-2347 (March 21, 2014).

The employee was taking medications for bipolar disorder and attention deficit disorder. As a reasonable accommodation, the employer permitted her to start work at 10 a.m., thus providing an opportunity for her medications to become effective. After two years of performing her job with the accommodations, a new supervisor informed her that a new start time of 9:15 would be required; indicating that the 10 a.m. start time

was an undue hardship. After being able to uphold the earlier start, the employee was subsequently terminated for violation of the attendance policy.

The employee filed multiple claims with the EEOC, and eventually brought suit alleging violations of the Americans with Disabilities Act, the Illinois Human Rights Act, and Title VII violations.

The Court did not focus on whether the 10 a.m. start was reasonable, but whether the withdrawal of the accommodation after such a time period was reasonable on the part of the employer. The Court ruled for the employee with respect to the disability portion of the claim, finding that the employer failed to present sufficient evidence that the late start presented an undue burden for the employer. Further, the Court indicted that the employer should have done more to work with the employee in creating a reasonable accommodation.

The lesson for employers: Avoid unilaterally withdrawal of lengthy reasonable accommodations without working with the employee to find an alternative solution, or be able to demonstrate a clear undue burden as a result of the accommodations.

The case can be found at: <http://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2011cv02347/254345/83>

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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