RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

January 2016

ADA Accommodations – Am I Done Yet?

You have had several interactive discussions with your employee with a disability and you have considered every accommodation that he or his physician has suggested. You've even given a couple of the suggested accommodations a trial. But nothing is working to enable the employee to perform the essential functions of his position. So, you are done, right? You have fulfilled your ADA obligations to try to accommodate your employee, right?

Wrong! Don't forget your obligation to seek a different position for the employee as an ADA accommodation! To learn more about this largely misunderstood "accommodation of last resort" check out our post on the Matrix blog, **Matrix-Radar.com.**

Reassignment – Don't Forget the ADA "Accommodation of Last Resort"

http://matrix-radar.com/

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State Leave Law Updates – It's All About Paid Sick Leave

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.

Pennsylvania – Pittsburgh Paid Sick Leave Ordinance Deemed Unenforceable

The Pittsburgh Paid Sick Days Act scheduled to become effective on January 11, 2016 has been deemed unenforceable by an Allegheny County Court. The court based its decision on a prior 2009 Pennsylvania Supreme Court decision regarding a municipality's ability to regulate business activity. Employers would be wise to monitor developments and watch for an appeal of the decision.

Additional information regarding the Court decision can be found at: http://www.post-gazette.com/local/city/2015/12/22/Allegheny-County-judge-strikes-down-city-sick-leave-ordinance/stories/201512220166

The ordinance 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

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs.

Washington – Seattle Significantly Amends Paid Sick Leave Rights

In December 2015, the City of Seattle significantly amended its sick leave ordinance, becoming the first municipality to provide a private cause of action for adverse employer actions regarding sick leave rights. The amendment provides a three year statute of limitations for sick leave violations; two times actual wages for liquidated damages; potential employer penalties of $5,000-$20,000 in penalties; and up to $1,000 for notice violations.

The amendments also require non-exempt 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.

Additional information regarding the Seattle ordinance can be found at: http://www.seattle.gov/laborstandards/paid-sick-and-safe-time

See also: http://www.laborlawyers.com/seattle-adds-serious-teeth-to-sick-and-safe-leave-law?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact, Matrix does not currently manage accrued sick time.

Reminder! Tacoma, Washington – Paid Sick Leave Rules In Effect Soon

Effective February 1, 2016, all full-time, part-time and temporary employees working in Tacoma will receive 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://cms.cityoftacoma.org/finance/paid-leave/tacoma-paid-leave-rules-and-regulations.pdf

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact, Matrix does not currently manage accrued sick time.

Oregon – Statewide Paid Sick Now in Effect

The Oregon state-wide sick leave law is in effect as of January 1, 2016. Under provisions of the law, employees earn one hour of sick time for every 30 hours worked, and may accrue up to forty 40 hours per year. Employers with fewer than 10 employees may provide unpaid sick time. As the new law provides limited exceptions and provides special nuances related to the City of Portland, employers operating in Oregon in any capacity would be wise to review the provisions of the new legislation.

Provisions of the new law can be found at: http://gov.oregonlive.com/bill/2015/SB454/

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact, Matrix does not currently manage accrued sick time.

New Jersey– State Senate Passes Statewide Paid Sick Leave

During December 2015, the New Jersey Senate passed a bill providing for paid sick leave for all employees in New Jersey. Under the provisions of the bill, employers with 10 or more employees would be required to provide up to 72 hours of paid sick leave, while small employers would be required to provide up to 40 hours of sick leave. One hour of leave would be earned for every 30 hours of work.

If the New Jersey Assembly passes an identical version of the bill, it will be forwarded to the governor for signature.

New Jersey Senate Bill 2354 can be found at: http://www.njleg.state.nj.us/2014/Bills/A2500/2354_I1.HTM

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact, Matrix does not currently manage accrued sick time.

Notable EEOC Disability News:

PDA – Pregnancy Discrimination: *Equal Employment Opportunity Commission v. CFS Health Management, Inc., dba Shefa Wellness Center,* Case No. 1:15-cv-00845 (employer to pay $37,000 for terminating pregnant employee 2 days after revealing her pregnancy; employer claimed the employee had "deceived" the company by not disclosing her pregnancy during the hiring process. The terms of settlement include provisions for equal employment opportunity training and reporting and posting of anti-discrimination notices): http://www.eeoc.gov/eeoc/newsroom/release/12-2-15.cfm

ADA – Disability Discrimination: *EEOC v. McDonald's Corporation, et al.,* Case No. 4:15-cv-1004 FJG (McDonald's violated federal law by refusing to accommodate a deaf applicant during the application process, and failing to hire the applicant despite evidence that he could perform the job): http://www.eeoc.gov/eeoc/newsroom/release/12-21-15a.cfm

ADA – Disability Discrimination: *EEOC v. Beverage Distributors Company, LLC*, Civil Action No. 11-cv-02557-CMA-CBS (Jury awarded $180,000 in lost wages; employee with poor eyesight was terminated when his position was eliminated and the employer refused to hire him in another position): http://www.eeoc.gov/eeoc/newsroom/release/12-7-15a.cfm

GINA – Genetic Information Violation: *EEOC v. Joy Underground Mining, LLC, t/a Joy Mining Machinery*, Civil Action No. 2:15-cv-01581-CRE (EEOC sues employer, alleging that it violated GINA when it asked applicants, in a post-offer medical exam, to provide protected genetic information such as family history of cancer, diabetes, heart disease, etc.) http://www.eeoc.gov/eeoc/newsroom/release/12-4-15a.cfm

Notable Case

Hooper v. Proctor Health Care, 7th Cir., No. 14-2344 (Oct. 26, 2015)

The employee, a family practice physician, received a medical diagnosis of bipolar disorder in 2000. In April 2010, the employee had an incident with a neighbor that resulted in police involvement. Subsequently, the employee revealed his bipolar condition to his employer, and discussed the possibility of medical leave.

The employee was placed on medical leave and applied for long-term disability benefits. In late April, the employee was denied long-term disability, but his psychiatrist agreed that he should be placed on medical leave. In mid-May, the psychiatrist advised that the employee was eligible to return to work. The employer delayed the return to work until the diagnosis could be confirmed by an independent medical examiner.

The independent medical examination was conducted in early August, at which time the evaluator indicated that the employee could return to work without restrictions, but also noted that the employer could make certain accommodations, including a modified work schedule and additional sick days.

On August 4, the independent medical examiner advised the employer that the employee was eligible to return to work. The employee believed that he would not have to return to work until the employer received a formal written report, estimated to be completed three weeks after the examination. The employer made multiple phone calls and left multiple messages to the employee during the first half of August, without a response from the employee.

The employee's mother died on August 12. As a result, the employee traveled to Michigan from August 13-18 to attend to his late mother's funeral and affairs. During that time, the employer mailed the employee a letter advising that multiple attempts to contact him by telephone had taken place, and that his employment would be terminated if he did not contact the company by August 20. On August 23, the employer mailed a letter notifying the employee that his employment had been terminated effective August 20.

The employee filed an administrative charge alleging disability discrimination and retaliation. The employee subsequently filed suit in the Central District of Illinois under the ADA and Illinois Human Rights Act. The District Court granted summary judgment to the employer with respect to the disability discrimination claim, and deemed that the employee had waived his rights under the IHRA. The employee appealed the decision with respect to the ADA ruling.

The District Court noted that the employee would have a difficult time asserting a failure to accommodate claim, as facts alleging a failure to accommodate were not contained in the complaint. Further, the Court found that even if the employer was obligated to accommodate, it would have been impossible to do so because the employee did not report to work.

The Appellate Court indicated that the employee would have to establish that he is a qualified individual with a disability; the employer was aware of the disability; and, the employer failed to accommodate the disability. As the medical evaluation determined that the employer could return to work without restrictions, the Court determined that the recommendations for possible accommodations could not form the basis of a failure to accommodate claim because the medical evaluator determined that the employee could return to work without restrictions. The Court also determined that the employee would not be able to prove an ADA violation utilizing either the direct or indirect method of evaluation. The Court found that the employee failed to introduce sufficient evidence to permit a reasonable juror to conclude that he was discriminated against because of his disability.

The Court also noted that the employee's "subjective understanding that he could not return to work until [the medical evaluator] completed his written report is immaterial…[the employee] ignored his employer's direction at his own peril, as the relevant question here is the employer's – not the employee's – honest belief."

This case demonstrates the importance of employer documentation of the termination process. The case also provides the framework for evidentiary and proof requirements for disability claims. Employers can review the full case at the link below.

This ruling can be found at: http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2015/D10-26/C:14-2344:J:Ellis:aut:T:fnOp:N:1645269:S:0

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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.