

## Legislative Update

*February 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.

### ***Massachusetts – Parental Leave Bill Signed***

On January 7, 2015, Governor Deval Patrick signed the Parental Leave Bill, Amending the Massachusetts Maternity Leave Act. The Amendments will go into effect on April 7, 2015. The Bill 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.

Leave becomes available after three (3) months of employment, though employers may determine whether the leave is paid or unpaid. The Bill 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:** Our software will be programmed to include a leave for male employees for matters relating to birth or adoption of a child. Employers may need to update their policies to include information regarding this bill.

### ***President Provides Greater Sick Leave for Federal Employees***

On January 15, 2015, President Barack Obama issued a Presidential Memorandum, Modernizing Federal Leave Policies for Childbirth, Adoption and Foster Care to Recruit and Retain Talent and Improve Productivity. The Memorandum instructs the heads of federal agencies to provide federal workers with six (6) weeks of paid sick leave to care for a new child or an ill family member.

The text of the Memorandum with specific provisions may be found here:

<http://www.whitehouse.gov/the-press-office/2015/01/15/presidential-memorandum-modernizing-federal-leave-policies-childbirth-ad>

see also

<http://www.washingtonpost.com/blogs/post-politics/wp/2015/01/14/obama-to-propose-seven-days-paid-sick-leave-for-workers/>

**IMPACT TO YOUR PROGRAM WITH MATRIX:** There is no impact to your program at Matrix as this is a pay practice which Matrix does not manage at this time.

## **President Encourages Sick Leave Legislation in State of the Union Address**

During his State of the Union Address, the President called for passage of legislation affording greater sick leave rights for employees. According to the President:

*“Today, we’re the only advanced country on Earth that doesn’t guarantee paid sick leave or paid maternity leave to our workers. Forty-three million workers have no paid sick leave. Forty-three million. Think about that. And that forces too many parents to make the gut-wrenching choice between a paycheck and a sick kid at home. So I’ll be taking new action to help states adopt paid leave laws of their own. And since paid sick leave won where it was on the ballot last November, let’s put it to a vote right here in Washington. Send me a bill that gives every worker in America the opportunity to earn seven days of paid sick leave. It’s the right thing to do.”*

Congress has previously considered the Healthy Families Act, which would have provided up to seven (7) days of paid sick leave annually for those with fifteen or more employees. Congress did not pass the bill. However, in light of the growing sick leave legislation being passed at the state and municipal levels, it is not inconceivable that Congress will revisit the matter in the near future.

The complete text of the State of the Union Address can be found at: <http://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-barack-obama-prepared-delivery-state-union-address>

**IMPACT TO YOUR PROGRAM WITH MATRIX: This does not currently impact your program with Matrix.**

### **Plan Ahead: Oakland, California – Paid Sick Leave Ordinance in Effect March 2<sup>nd</sup>**

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. Like other similar 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: This does not affect your program at Matrix as it is a pay practice, not a leave of absence.**

### **California: Forms Reminder**

Based upon the California Family Rights Act regulations, Matrix utilizes the California state certification rather than the Department of Labor certification form for all California leaves that are not running concurrent with disability benefits.

### **Notable EEOC Disability News:**

*EEOC v. EZEFLOW USA, Inc. (ADA Claim) at:* <http://www.eeoc.gov/eeoc/newsroom/release/1-9-15b.cfm>

*EEOC v. Kaufman’s Children Center for Speech, Language, Sensory-motor and Social connections, Inc. (ADA Claim) at:* <http://www.eeoc.gov/eeoc/newsroom/release/1-5-15.cfm>

*EEOC v. Comprehensive Behavioral Health Center (ADA Claim) at:* <http://www.eeoc.gov/eeoc/newsroom/release/12-31-14a.cfm>

## **Notable Cases:**

*Felkins v. The City of Lakewood, 10<sup>th</sup> Cir., No. 13-1415 (Dec. 19, 2014)*

The plaintiff was terminated after utilizing 466 hours of leave for a multitude of injuries sustained during the first ten months of employment. The employee submitted an FMLA leave request with a physician's note. The physician's note indicated that the employee did not suffer from a chronic condition (a fractured femur).

The plaintiff later indicated that she suffered from avascular necrosis as a result of the previously fractured femur. Because the plaintiff self-diagnosed the avascular necrosis (without being a trained medical professional), the 10<sup>th</sup> Circuit Appellate Court determined that her claim failed for a lack of competent professional evidence regarding her disability and limitations. Employers would be wise to review the documentation that employees provide when addressing disability, limitation and accommodation matters.

The opinion can be found at: <https://www.ca10.uscourts.gov/opinions/13/13-1415.pdf>

## ***EEOC v. Kohl's Department Stores, Inc., 1<sup>st</sup> Cir., No. 14-1268 (Dec. 19, 2014)***

Plaintiff requested a steady shift as an accommodation for her Type I Diabetes condition. The plaintiff advised her employer that erratic work schedules and swing-shifts were exacerbating her condition. The employee provided a physician's note requesting a predictable day shift. The employer informed the employee that she could not have a steady nine to five work schedule. The employer was prepared to offer a no swing-shift schedule, but during the meeting with the employee to discuss the situation, the employee became upset. The employee ultimately stated an intention to quit, slammed the door and exited. The employer made subsequent attempts to contact the employee, asking her to reconsider her resignation. The employee did not respond.

The EEOC brought the claim against the employer, alleging a breach of the good faith effort of reasonable accommodation via the interaction process as required under the ADA, as well as constructive discharge. The First Circuit Court of Appeals quickly dismissed the constructive discharge claim, finding that no reasonable employee would have felt compelled to resign under the circumstances. Further, the Court determined that the employer made a good-faith effort in utilizing the interactive process by attempting to contact the employee on two occasions after she quit, as well as demonstrating a willingness to engage in dialogue. However, the Court found that the employee abandoned the interactive process by quitting prematurely. The lesson for employers is to clearly demonstrate a willingness to engage in the interactive process and document all attempts to do so.

The opinion can be found at: <http://media.ca1.uscourts.gov/pdf.opinions/14-1268P-01A.pdf>

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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.***