RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

August 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.

California – New Law Provides Greater Protections for Employees Seeking Accommodations for Disability or Religion

California Assembly Bill 987 was signed into law by the Governor of California on July 16, 2015. The Bill amends and clarifies the California Fair Employment and Housing Act, and becomes effective January 1, 2016. The amendment was introduced to alleviate any confusion that might have occurred following the holding in the *Rope v Auto-Chlor System of Washington, Inc. (2013)* case. The new law reinforces greater protections for employees seeking accommodations for disabilities or religion, including a prohibition on retaliation, such as discipline and termination. The law provides protections regardless of whether an accommodation was made.
Specifically, the law provides:

> *"Notwithstanding any interpretation of this issue in Rope v Auto-Chlor Systems of Washington, Inc., (2013) 220 Cal. App. 4th 635, the Legislature intends (1) to make clear that a request for reasonable accommodation on the basis of religion or disability is a protected activity, and (2) by enacting paragraph (2) of subdivision (m) and paragraph (4) of subdivision (l) of Section 12940,* ***to provide protection against retaliation when an individual makes a request for reasonable accommodation under these sections, regardless of whether the request was granted.*** *With the exception of its holding on this issue, Rope v. Auto-Chlor Sys. of Washington, Inc., (2013) 220 Cal. App. 4th 635 remains good law."*

For more information or to review the text of Assembly Bill 987:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB987

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to the Matrix Leave program.

Rhode Island – Expands Protections for Pregnant and Nursing Employees

Rhode Island will be requiring mandatory reasonable accommodations for pregnant and nursing women after expanding the protections afforded under the Rhode Island Fair Employment Practices Act. The expansion of the Act will make it illegal to refuse to reasonably accommodate a condition related to pregnancy, childbirth or a related medical condition.

These accommodations could include longer breaks, recovery time after childbirth, job restructuring, light duty, seating, temporary job transfers and job or work schedule modifications. The new legislation also expands break time for nursing mothers under the Nursing Working Mothers Act. The new law requires employers to provide a written notice of rights to current employees by October 22, 2105. Employers operating in Rhode Island would be wise to review the changes to maintain compliance.

An article regarding the changes can be found at:

https://www.littler.com/publication-press/publication/rhode-island-enacts-legislation-requiring-accommodations-pregnant

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to the Matrix Leave program.

Maryland – Montgomery County Mandates Sick Leave

Effective October 1, 2016, most employers in Montgomery County, Maryland, will be required to provide 56 hours of paid sick and safe leave. The new law covers private and government employers with one or more employees in the county. Employers with five or more employees will provide up to 56 hours of paid sick time, earned at one hour per thirty hours of work. Employers with fewer than five employees must provide 32 hours of paid leave and 24 hours of non-paid leave. Employees cannot be required to take leave in increments of greater than four hours.

Leave may be utilized for the care or treatment of an employee's mental or physical conditions, injuries or illnesses; to obtain preventive medical care for the employee or a family member; to care for a family member's health condition; for health emergencies impacting the employer or the day care or school of the employee's children; certain matters related to domestic violence sexual assault; and other medical-related matters. Employers would be wise to review the text of the new law to maintain compliance.

The law itself can be found at:

http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2014/20150623_60-14.pdf

More information can be found at:

http://www.govdocs.com/montgomery-county-md-paid-sick-leave-law/

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to the Matrix Leave program. Matrix does not manage paid sick time or county ordinances.

Pittsburgh, Pennsylvania – Council Passes City-Wide Sick Leave Ordinance

On August 3rd, the Pittsburgh City Council passed an ordinance requiring all local employers to provide paid sick leave for employees. State and local governments are exempted. Employers with 15 or more employees must provide one hour of sick leave pay for every 35 hours of work, with a 40 hour accrual maximum. Employers with fewer than 15 employees must provide up to 24 hours of paid sick time.

The mayor has indicated that he will sign the ordinance. It is to become effective 90 days after the city provides notice postings. The ordinance was passed very quickly, and groups have vowed to challenge the legislation. Employers operating in Pittsburgh would be wise to review the ordinance and monitor any legal challenges that might develop.

For additional information, or to review the ordinance:

http://www.post-gazette.com/local/city/2015/08/03/City-Council-passes-paid-sick-leave-requirement-businesses-pittsburgh/stories/201508030135

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to the Matrix Leave program. Matrix does not manage paid sick time, or city ordinances.

Notable EEOC Disability News:

- *EEOC v. IDEX Corporation (ADA Claim) (employer sued by EEOC for allegedly firing employee because of his disability (cancer) and his chemotherapy; evidence includes repeated invasive personal questions by supervisor about his condition and ability to work):*

http://www.eeoc.gov/eeoc/newsroom/release/7-27-15c.cfm

- *EEOC v. Roto Rooter (ADA Claim) (employer agrees to pay $100,000 for wrongful termination of Iraqi war veteran with war-related disabilities rather than providing accommodations:*

http://www.eeoc.gov/eeoc/newsroom/release/7-10-15.cfm

- *EEOC v. OHM Concessions Group, LLC, d/b/a Dunkin Donuts (ADA) (employer sued by EEOC for allegedly terminating employee with breast cancer 3 days before she needed to start leave for chemotherapy and radiation :*

http://www.eeoc.gov/eeoc/newsroom/release/7-6-15.cfm

Notable Case
Employer's failure to allow employee sufficient time to submit FMLA certification results in lawsuit

White v. Beltram Edge Tool Supply Inc., 11th Cir., No. 14-11750 (June 12, 2015)

The plaintiff-employee injured her knee in April 2010, but continued work during the year. On December 23, 2010, the plaintiff was off work for a myriad of health reasons including bronchitis, sleep apnea, hypertension, shortness of breath, chest pain, and anxiety. While off work, the employee fell and re-injured her knee. The re-injured knee created a basis for FMLA leave.

The employee notified the employer of the subsequent knee injury on January 28, 2011. The employer provided the employee with a physician's certification form and advised the employee to return the form no later than February 12, 2011. On February 8, 2011, the employee signed a form for a knee operation. However, her physician was going on leave and unable to complete the physician's certification form before February 12th. The employee contacted the company and requested additional time for completion of the certification form, stating that she had an appointment with another orthopedist on February 15. The company agreed to provide "a couple of extra days," but advised the employee to get the form in as soon as possible. The company did not provide a specific due date for the form.

The employee provided doctor's notes explaining her absences and indicating that she was eligible to return to work on January 31, 2011. The company terminated the employee's employment, stating that the termination was based upon the facts that she did not return to work after January 31st and that she did not return the physician's certification form.

The plaintiff underwent surgery on March 7, 2011. On March 30, 2012, her physician provided a letter indicating that she would have been eligible to return to work on March 28, 2011, within the 12 weeks of FMLA leave that she would have been afforded.

The plaintiff filed suit in January 2013, alleging interference with FMLA rights. The District Court granted summary judgment for three reasons. First, that she did not have a serious health condition; second, that she did not provide proper FMLA notice; and third, that she requested more than 12 weeks of leave so the employer would not have had a duty to reinstate her following leave.

The plaintiff appealed to the 11th Circuit Court of Appeals. The Appellate Court reversed the summary judgment, indicating that it was erroneous for the district court to declare that there was not a serious health condition. The Court held that analysis of this issue requires evaluation of medical information provided after the date of termination, not only that information received by the employer before termination. Further, the Court determined that the knee surgery was an "unforeseeable" event. Therefore, the employee was not required to provide 30 days of notice prior to taking leave. Additionally, the Court found that the fact that the employee contacted the employer the day after reinjuring the knee provided timely notice under the FMLA.

Lastly, the Court determined that the district court finding that the employee would have utilized more than 12 weeks of leave was erroneous in light of the fact that the physician provided only an estimate of leave time. It is important to note that the Appellate Court did not indicate that the employee should win in this case, but only that summary judgment was not appropriate.

However, this case makes it clear that employers must use extreme care and caution in making termination decisions regarding employees with FMLA issues. An evaluation of FMLA claims may not be limited to medical information received before termination, and unforeseeable events may provide employees with greater latitude in leave notice requirements. Employers would be wise to review the case at:

http://law.justia.com/cases/federal/appellate-courts/ca11/14-11750/14-11750-2015-06-12.html

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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.