

Legislative Update

September 2015

Hello readers! Announcing our new blog, Matrix-Radar.com

Matrix Absence Management is always scanning the horizon for important news about leave law and accommodation compliance developments. Through our blog we will be able to broadcast this news to our clients and the absence management industry as it develops.

Our lead contributor on the blog will be Marti Cardi. Marti is an attorney and industry expert, and our Vice President of Product Compliance. We will have guest contributors from time to time as well.

The inaugural blog post can be found at matrix-radar.com. In this post Marti introduces the blog and also talks about investigating suspected FMLA misuse – instructive cases where the employers did or did not do it right. This is always a challenge for employers. We want our clients to know what options they have to challenge suspected FMLA abuse and how we can help with these investigations.

You'll find directions for subscribing on the website. We hope you will sign up and receive notification every time there is a new post – about every week or so, depending on how busy the legislatures and courts are.

We welcome your comments on the blog. And, please feel free to suggest topic ideas for future blog posts. What accommodation and absence challenges are you facing in your workplace?

Happy reading!

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### ***And now for our September Legislative Update***

**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 developments.**

### **Colorado Parental School Involvement Leave Expires**

In 2009 Colorado passed the "Parental Involvement in K-12 Education Act," which required employers to provide parents of children in grades K-12 with up to 18 hours off per school year to attend school conferences and participate in meetings regarding attendance, disciplinary, and other matters. The law was enacted with a September 1, 2015, sunset provision, and the Colorado legislature failed to extend the law, which is now repealed and of no further effect.

**IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix Absence Management will remove this law from its administered leave programs and will no longer approve time off requested under the law.**

## **Executive Order May Impact Federal Contractors**

President Obama has drafted and is currently considering an Executive Order that would require paid sick leave for the employees of federal contractors and subcontractors. The Order requires a minimum of 56 hours of paid leave per year, and provides broad coverage. Included in the Order are paid leave rights for matters ranging from time off for an employee's medical condition to the illness of a child, spouse, parent, domestic partner, or any individual deemed the equivalent of a family relationship. Paid time off would also include matters related to domestic violence, stalking, sexual assault, counseling and criminal proceedings. Employers would be wise to monitor developments.

For more information: [http://www.nytimes.com/2015/08/06/us/white-house-drafts-executive-order-on-paid-sick-leave-for-federal-contractors.html?\\_r=1](http://www.nytimes.com/2015/08/06/us/white-house-drafts-executive-order-on-paid-sick-leave-for-federal-contractors.html?_r=1)

**IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact on programs managed by Matrix Absence Management.**

## ***Tacoma, Washington – Paid Sick Leave Rules Have Been Finalized in August***

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. Utilization of leave may occur in increments of 1 hour or more. The leave may be used for the medical condition of the employee or a family member, but also includes issues related to domestic violence, sexual harassment, assault, stalking, certain school closures, and bereavement. Employers operating in Tacoma, Washington, should review the links provided below.

The Paid Leave Rules can be found at: <http://cms.cityoftacoma.org/finance/paid-leave/tacoma-paid-leave-rules-and-regulations.pdf>

More information can be found at: <http://www.cityoftacoma.org/cms/One.aspx?portalId=169&pageId=75860>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No changes to the Leave program, we do not manage paid sick leave or city ordinances.**

## ***Vermont – State Senate to Consider H.187 in January***

Now that H 187 has passed in the Vermont House of Representatives, it is expected to be considered by the State Senate in January 2016. The proposed bill would provide paid sick leave to employees. The House Bill is deemed to be more business friendly than laws passed or introduced in other states and municipalities. It provides a gradual phase-in period to permit employers to adjust to the changes, and provides a mandate for 5 paid days of leave per year, rather than the required 7 days of leave that was contained in the previously defeated Sodexo Bill. Employers operating in Vermont would be wise to monitor future developments.

For additional information, or to review House Bill 187: <http://legislature.vermont.gov/bill/status/2016/H.187>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No changes to the Leave program, we do not manage paid sick leave.**

## **Reminder - Rhode Island – Expanding Leave for Pregnant and Nursing Mothers Effective October 22<sup>nd</sup>**

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. Note that the law does not require the employee to be disabled by the pregnancy to be protected. Rather, even common conditions of pregnancy may support a request for an accommodation. Typical accommodations may include special equipment, transfer to a less strenuous position, job restructuring, modified work schedule, and leave of absence. However, employers cannot require an employee to take leave rather than provide the employee with a temporary workplace accommodation.

Employers operating in Rhode Island would be wise to review the changes to maintain compliance.

An article regarding the changes can be found at: <http://www.jdsupra.com/legalnews/ri-employers-large-and-small-required-94284/>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact unless you have the ADA Advantage program with Matrix. If you do, the accommodation will be managed as part of that program.**

## **Wisconsin – One Day of Rest in Seven**

Employers operating factories or mercantile establishments in the State of Wisconsin must provide employees with at least one period consisting of 24 consecutive hours of rest in each calendar week.

This section does not apply to janitors; watchmen; persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream; or in canneries and freezers; persons employed in bakeries, flour and feed mills, hotels, and restaurants; employees whose duties include no work on Sunday other than caring for live animals or maintaining fires, and any labor called for by emergency that could not reasonably have been anticipated. The section does not apply to employees who waive the right in writing. There are also some exceptions regarding superintendents and department heads in certain industries.

The Notice from The State of Wisconsin Department of Worker Development can be found at: [https://dwd.wisconsin.gov/er/labor\\_standards\\_bureau/one\\_day\\_rest\\_in\\_seven\\_law.htm](https://dwd.wisconsin.gov/er/labor_standards_bureau/one_day_rest_in_seven_law.htm)

**IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact to Matrix based on employee's schedule being provided. Matrix will calculate FMLA and/or State leaves accordingly.**

## **Notable EEOC Disability News:**

### **EEOC Issues “Digest of EEO Law”**

The Equal Employment Opportunity Commission has released the latest digest of Equal Employment Opportunity Law, including the article *Gender Identity and Sexual Orientation Coverage under Title VII Case Law Update: Review of Pre- and Post-Macy Title VII Protections for LGBT Employees*.

The digest can be found at: <http://www.eeoc.gov/eeoc/newsroom/release/8-31-15b.cfm>. See also:

*EEOC v. Neenah Paper, Inc. (ADA Claim)* (EEOC asserts that employer violated the ADA when it required, as a condition of employment, an employee to take medications at work that controlled the employee’s disability). <http://www.eeoc.gov/eeoc/newsroom/release/8-27-15.cfm>

*EEOC v. Restaurant & Bar Arthurs, Ltd. et al (PDA Claim)* (employer violated the federal Pregnancy Discrimination Act – part of Title VII – when it terminated a pregnant cocktail server because she was “starting to show”). <http://www.eeoc.gov/eeoc/newsroom/release/8-25-15.cfm>

*Reminder: EEO-1 Annual Survey filings must be completed by September 30, 2015.* The EEO-1 is an annual survey required to be filed by all private employers with 100 or more employees and federal government contractors or first-tier subcontractors with 50 or more employees and a contract/subcontract of \$50,000 or more. The filing of the EEO-1 report is not voluntary, and is required by federal law. More information regarding the filings can be found at: <http://www.eeoc.gov/eeoc/newsroom/release/8-26-15.cfm>

### **Notable Case**

***With proper showing, employer can deny accommodations and terminate employee for inability to perform essential functions***

*Doak v. Johnson, Secretary, U.S. Dept. of Homeland Security, (D.C.Cir. August 18, 2015)*

The employee was employed by the United States Coast Guard. She suffered from numerous conditions requiring leave on multiple occasions. The employee exercised her leave in varying patterns, and sometimes with limited notice. The Coast Guard denied her request for a later start time, and also the request for telecommuting, indicating that such accommodations were not justified by the employee’s medical documentation and that such requests were incompatible with her job duties. The Coast Guard ultimately terminated the employee for attendance-related issues.

The employee sued the Department of Homeland Security under the Rehabilitation Act (substantially similar to the ADA, applicable to government contractors) alleging an unlawful denial of accommodations, as well as retaliation for requesting accommodations. The District Court granted summary judgment to the employer, determining that the employee was not a qualified individual with a disability, and that there was a lack of evidence regarding retaliation. The United States Court of Appeals for the District of Columbia affirmed that decision.

The Appellate Court noted that there are times and circumstances in which an employer might have to permit the accommodations requested in this case. However, the Court determined that the accommodations requested by the employee in this matter would have rendered her unable to perform the essential functions of her job. Specifically, the Court found that one of the essential functions was “being present in the office to participate in interactive, on-site

meetings during normal business hours and on a regular basis.” The employer offered substantial evidence that in-person attendance at meetings was an essential function of the job.

This case makes it clear that employers should be sure to document all essential functions of an employee’s job, and to take any adverse employment actions only when it can demonstrate that the employee is truly unable to fulfill the essential job duties and obligations. Employers would be wise to review this case to learn more about the specific evidence provided by the employer at trial.

This case can be found at: <http://hr.cch.com/ELD/DoakJohnson081815.pdf>

**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.***