

Legislative Update

April 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.

Status of FMLA Leave Related to an Employee's Same-Sex Spouse: Texas federal court injunction halts implementation of FMLA's New "Place of Celebration" rule in some states

As outlined in our March 2015 Legislative Update, March 27 was the scheduled effective date for a new FMLA regulation (sometimes referred to as the "Final Rule"). The new regulation requires employers to grant FMLA leave to employees for purposes related to a same-sex spouse if the couple's marriage is recognized as valid in the place where the marriage ceremony was performed – the "place of celebration" rule. The prior regulation required employers to provide such leave only if the couple resided in a state which recognized same-sex marriages – the "state of residence" rule.

Examples of FMLA leave related to a same-sex spouse include leave to care for a spouse with a serious health condition, to attend to exigencies related to a military spouse, or to care for a spouse who is a covered servicemember with a serious injury or illness.

Court Ruling: Late on March 26, 2015, a Texas federal court granted an injunction prohibiting the U.S. department of Labor (DOL) from enforcing the place of celebration rule. In addition to Texas, the states of Arkansas, Louisiana, and Nebraska were parties to the lawsuit. All four of these states currently have laws that deny the right to marry to same-sex couples, although some court challenges are still pending.

The Texas court's ruling did not state whether it purports to be applicable in states other than the four states involved in the action. This leaves employers and absence administrators like Matrix without clear guidance as to whether the state of celebration rule is now in effect in the 46 other states and the District of Columbia. The DOL's FMLA webpage contains only a short announcement of the injunction, with no information regarding how broadly it believes the court's ruling applies. See the DOL announcement at <http://www.dol.gov/whd/fmla/>, which also has a link to the court's opinion. The court ruling does not affect any leave pursuant to state laws or company policies.

IMPACT TO YOUR PROGRAM WITH MATRIX:

We understand that clients need to know how Matrix will administer employee FMLA leave requests related to a same-sex spouse until there is consensus on this topic. After considering risks and possible outcomes, Matrix has determined to:

- *Continue to use the state of residence rule in the four states involved in the lawsuit (AR, LA, NE, TX), and*
- *Implement the state of celebration rule in all other 46 states, the District of Columbia, and Puerto Rico.*

Matrix's process will require little change, as leave requests for same-sex spouses in the four subject states will be handled much the same as leave requests for other non-qualifying relationships.

Changes to the California Family Rights Act Coming July 1, 2015

The California Fair Employment & Housing Council has announced the approval of significant revisions to the California Family Rights Act (CFRA) regulations. The changes will be effective on July 1, 2015. There are numerous revisions but, in short, some of the important changes include:

1. Incorporation of the FMLA regulations that were effective as of March 6, 2013, unless specific CFRA provisions are to the contrary
2. Changes to the certification form
3. Amendments regarding the certification process, authentication, and second opinions
4. Changes to certain definitions, including serious health condition, covered employer, eligible employee, and others
5. Specific requirement for employers to engage in the interactive accommodation process if the employee's condition qualifies as a disability and the employee is unable to RTW at the conclusion of CFRA leave
6. Expansion of the intermittent bonding rules
7. Addresses an employee's use of accrued paid time off and disability or paid family leave benefits during CFRA leave

IMPACT TO YOUR PROGRAM WITH MATRIX:

Matrix will be studying the revised regulations in detail, with more information to come well before the effective date of July 1.

Reminder! Massachusetts – Parental Leave Bill Going Into Effect This Month

The Parental Leave Bill, Amending the Massachusetts Maternity Leave Act, will go into effect on April 7, 2015. The Act 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.

For the text of the law see: <http://www.mass.gov/mcad/maternity1.html>. For an explanation of the changes, see <http://www.mass.gov/mcad/documents/Parental-Leave-Fact-Sheet.pdf>.

IMPACT TO YOUR PROGRAM WITH MATRIX:

Matrix will refer to this policy as MA Parental Leave. The policy will be linked to newborn leaves in order to apply to paternity and maternity leaves.

Reminder! Philadelphia – Paid Sick Leave Bill to Go into Effect Soon

The Promoting Healthy Families and Workplaces Bill, providing for paid sick leave for approximately 200,000 employees in Philadelphia, will become effective May 13, 2015. Covered employees will receive the accrual of one (1) hour of paid sick leave for every forty (40) hours worked. The ordinance specifically excludes independent contractors, seasonal employees, adjunct professors, employees hired for a term of less than six (6) months, interns, pool employees, State and Federal employees, and employees covered by a bona fide collective bargaining agreement.

The ordinance also extends to leave for issues related to domestic violence. Employers with less than ten (10) employees must also grant leave, but the leave can be unpaid for these small employers. The ordinance also provides for notice and posting requirements.

For more information or to review the text of the ordinance:

<https://phila.legistar.com/LegislationDetail.aspx?ID=2101250&GUID=5D12D54D-B1A7-4446-B646-95BE528F771C&Options=ID|Text|&Search>

IMPACT TO YOUR PROGRAM WITH MATRIX:

This is a sick pay practice and as such, not managed by Matrix.

Reminder! Washington, D.C. – Protecting Pregnant Workers Fairness Act Now in Effect

The Protecting Pregnant Workers Fairness Act of 2014 went into effect March 3, 2015. The Act affords pregnant employees enhanced rights with respect to accommodations related to pregnancy, childbirth, or related medical conditions, which could include modified work schedules, longer breaks, or additional time off from work.

For the text of the law, see: <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=5173512>. For more information, see: <http://www.natlawreview.com/article/dc-s-protecting-pregnant-workers-fairness-act-takes-effect>

IMPACT TO YOUR PROGRAM WITH MATRIX:

There is no impact to Matrix managed leave programs. ADA Advantage will manage for this accommodation for clients who have contracted with us for this service.

Arkansas – Proposed Legislation to Increase Maternity Leave/Benefits

The Arkansas General Assembly is currently considering House Bill 1426, which would permit state employees to receive greater maternity leave/benefits of up to \$500.00 per week for six (6) weeks. The bill would require the exhaustion of other forms of leave benefits before the maternity leave would become effective.

The most current version of the proposed legislation can be found at:

<ftp://www.arkleg.state.ar.us/Bills/2015/Public/HB1426.pdf>

IMPACT TO YOUR PROGRAM WITH MATRIX:

This legislation applies to Arkansas state employees only and does not impact the private sector.

Michigan – Paid Sick Leave Proposals in House and Senate

The Michigan Legislature is currently considering Senate Bill 101 and House Bill 4167, which would provide employees with one (1) hour of paid sick leave for every thirty (30) hours worked. The proposed legislation includes part-time employees. The proposed measures would also extend to the care of family members, and provides special protections for single-parent and domestic partners raising children, as well as grandparents.

Senate Bill 101 can be found at: <http://www.legislature.mi.gov/documents/2015-2016/billintroduced/Senate/htm/2015-SIB-0101.htm>

House Bill 4167 can be found at: <http://www.legislature.mi.gov/documents/2015-2016/billintroduced/House/htm/2015-HIB-4167.htm>

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Minnesota – Legislature Considers Working Parents Act

The Minnesota Legislature is currently considering House File 1093 and Senate File 1085, which would expand pregnancy and parental leave to include foster parents and caregivers of adults. The Act would also create a state paid family leave insurance fund. The proposed legislation could have a very broad impact, expanding state sick leave to require nearly all employers to provide paid sick leave to nearly all employees.

House File 1093 can be found at: <https://www.revisor.mn.gov/bills/bill.php?b=house&f=HF1093&ssn=0&y=2015>

Senate File 1085 can be found at:
https://www.revisor.mn.gov/bills/text.php?number=SF1085&version=0&session=ls89&session_year=2015&session_number=0

IMPACT TO YOUR PROGRAM WITH MATRIX:

Matrix will assess the changes to our program if the law is finalized.

Notable EEOC Disability News:

EEOC v. First Title and Escrow, Inc. (ADA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/3-13-15a.cfm>

EEOC v. The Lash Group (ADA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/3-18-15a.cfm>

EEOC v. Gregory Packaging, Inc. (ADA Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/3-13-15.cfm>

Notable Case

Young v. United Parcel Service, Inc. 575 U.S. ____ (2015)

The plaintiff was an employee of United Parcel Service, Inc. The employee was pregnant and had exhausted her FMLA leave, and subsequently requested a light duty work schedule. The company denied the request, and forced the employee to take unpaid leave. The employer lost her medical coverage while on unpaid leave.

The employee later brought claims under the Americans with Disabilities Act and the Pregnancy Discrimination Act. The plaintiff alleged that the employer had previously provided light duty work modifications for other employees with work restrictions, but not for pregnancy. The district court dismissed the claims, and the Fourth Circuit Court of Appeals affirmed. Plaintiff appealed to the United States Supreme Court.

The Supreme Court had to determine whether the Pregnancy Discrimination Act requires an employer to provide the same accommodations to an employee with pregnancy related work limitations as to similar, but non-pregnancy related work restrictions?

In a 6-3 majority opinion, the Supreme Court remanded the case to the lower court for a determination of the extent of which the employer's policy treats pregnant employees less favorably than similarly situated non-pregnant employees with respect to work restrictions, including any legitimate reasons for any differences in treatment. Employers would be wise to review the outcome of this case as it provides guidance in handling accommodation requests made by pregnant employees.

Further details and background on this opinion can be found in a special edition Matrix whitepaper by Marti Cardi, Esq., Vice President, Product Compliance at Matrix. Download it at www.reliancestandard.com/ups.

The opinion can be found at: <https://supreme.justia.com/cases/federal/us/575/12-1226/>

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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.