

Legislative Update

June 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.

CFRA Regulations Update

Matrix has compiled an extensive guide to the changes in the CFRA regulations. A full overview of these changes can be found at:

<http://www.reliancestandard.com/SiteData/docs/California/30fdda7c26e380a7/California%20Family%20Rights%20Act%20Update-062015.pdf>

Philadelphia, PA – Paid Sick Leave Bill Now in Effect; PA Senate Responds

The Promoting Healthy Families and Workplaces Bill, providing for paid sick leave for approximately 200,000 employees in Philadelphia, is currently in effect. Covered employees now receive the accrual of one (1) hour of paid sick leave for every forty (40) hours worked. 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.

In response to the ordinance, the Pennsylvania Senate has passed Senate Bill 221, attempting to block the Philadelphia paid sick leave ordinance. Proponents of the Senate bill argue a need for uniform employment laws state-wide. If the Senate bill eventually becomes Pennsylvania law, municipalities will be denied the ability to enact requirements related to any form of mandated leave for employees. Employers operating in Pennsylvania would be wise to monitor developments in the Pennsylvania legislature in this matter.

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>

For more information or to review the text of Senate Bill 221:

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2015&sessInd=0&billBody=S&billTyp=B&billNbr=0221&pn=0773>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix does not currently manage city laws, nor do we manage PTO or accrued time off.

Massachusetts – Attorney General Announces Safe Harbor Notice for Earned Sick Time Law

The Massachusetts Earned Sick Time Law will go into effect on July 1, 2015. Under the provisions, employees working for employers with eleven or more employees are entitled to up to forty (40) hours of paid sick leave time, while employees working for smaller employers may earn up to forty (40) hours of unpaid leave.

According to the Attorney General's Office, "An employee can use earned sick time if required to miss work in order (1) to care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse; (2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) to address the effects of domestic violence on the employee or the employee's dependent child. Employees will earn one hour of sick time for every 30 hours worked, and begin accruing those hours on the date of hire or on July 1, 2015, whichever is later. Employees can begin to use earned sick time on the 90th day after hire."

To provide a transitional period for compliance, the Massachusetts Attorney General has provided notice of a safe harbor period. The safe harbor provisions provide, "For the period July 1 to December 31, 2015, any employer with a paid time off policy in existence as of May 1, 2015, providing to employees the right to use at least 30 hours of paid time off during the calendar year 2015 shall be in compliance with the law with respect to those employees and to any other employees to whom the use of at least 30 hours of paid time off under the same conditions are extended.

To remain in compliance, any paid time off, including sick time, used by an employee from July 1 to December 31, 2015, must be job protected leave subject to the law's non-retaliation and non-interference provisions. In all other respects, during this transition period, the employer may continue to administer paid time off under policies in place as of May 1, 2015.

On or before January 1, 2016, all employers operating under this safe harbor provision must adjust their paid time off policy to conform with the earned sick time law."

For more specific information on the Earned Sick Time Law

<http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/earned-sick-time/>

For more specific information on the Safe Harbor provisions

<http://www.mass.gov/ago/docs/workplace/earned-sick-time/est-safe-harbor.pdf>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix does not currently manage PTO or accrued time off.

Florida – Florida Civil Rights Act Amended

The Florida Civil Rights Act has been amended to include “pregnancy” as a protected class, along with race, color, religion, sex, national origin, handicap and marital status. The amendment will go into effect on July 1, 2015. The change in law will permit pregnant employees to bring a claim of discrimination under state law utilizing the Florida Civil Rights Act, rather than an exclusive federal remedy under Title VII. This development has the propensity increase the number of state-law claims that employers may have to defend against allegations of pregnancy-related discrimination and/or retaliation.

The legislation can be found at:

<https://www.flsenate.gov/Session/Bill/2015/0982>

IMPACT TO YOUR PROGRAM WITH MATRIX: No changes to Matrix LOA or ADA/A programs.

Vermont – House Bill 187

Vermont is now considering House Bill 187, The Healthy Workplaces bill. The bill is intended to permit employees the accrual of paid sick leave time, and prohibiting employers from penalizing employees for the use of such leave. The proposed legislation would permit one hour of paid sick leave for every forty (40) hours worked. The proposed legislation has several phase-in provisions, which can be found at:

<http://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0187/H-0187%20As%20Passed%20by%20the%20House%20Official.pdf>

IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix does not currently manage PTO or accrued time off.

Bloomfield, New Jersey – Paid Sick Leave Ordinance to Take Effect

The Bloomfield, New Jersey, paid sick ordinance will take effect June 2015. Employees accrue one hour of paid sick leave for every thirty (30) hours worked. Employers having ten (10) or more employees must provide up to forty (40) hours of paid leave, while smaller employers must provide up to twenty-four (24) hours.

Employees may take the sick leave for care for his/her own mental or physical illness; to receive diagnosis, care or treatment for his/her own mental or physical illness, injury, or health condition; care for a family member who needs preventative care; or care for a child whose school or place of care has been closed by a public health emergency.

For more information: <http://www.govdocs.com/bloomfield-ninth-in-n-j-to-mandate-paid-sick-leave/>

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Notable EEOC Disability News:

EEOC v. United Bible Fellowship Ministries, Inc. (Pregnancy Discrimination Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/5-27-15.cfm>

EEOC v. Tiny's Organics, LLC (Pregnancy Discrimination Claim) at: <http://www.eeoc.gov/eeoc/newsroom/release/5-4-15.cfm>

EEOC v. OK Concrete (Disability Claim): <http://www.eeoc.gov/eeoc/newsroom/release/5-12-15a.cfm>

Notable Cases

Bonkowski v. Oberg Industries, Inc. No. 14-1239, 2015 WL 2444503 (May 22, 2015)

Plaintiff was employed as a wire-cut operator and machinist at the defendant's facility. He had a myriad of health problems, including an aortic bicuspid, diabetes, colon removal, and a possible aortic aneurysm. Plaintiff was suspended from work for sleeping on the job.

During a meeting with supervisors regarding the work suspension, the employee began suffering from shortness of breath, chest pain and dizziness. The meeting was postponed and the employee went home. The employee continued to experience these symptoms at home and was subsequently taken to the hospital by his spouse around midnight.

The employee underwent a series of medical testing and was advised to follow-up with his primary care physician and a cardiologist. No work restrictions were given at the time of his discharge from the hospital.

The employee had been admitted to the hospital shortly after midnight on November 15, 2011 and discharged during the early evening hours of November 15th. Plaintiff was terminated from employment on November 16, 2011. As a result, the employee filed a FMLA action against the employer alleging; (1) the employer retaliated against him for exercising FMLA rights; and (2) the employer interfered with his FMLA rights.

The District Court dismissed the claims, determining that the plaintiff did not have a serious health condition under 29 U.S.C. § 2611(A) – “an illness, injury, impairment or physical condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility,” and thus not entitled to FMLA protection.

A major consideration of the Court was the interpretation of the terms, “inpatient care,” and “overnight stay.” The District Court relied upon ordinary dictionary definitions adopted by the FAA to define the terms, as neither the FMLA nor the DOL regulations provided sufficient guidance.

The Court held that a plaintiff must establish that he or she spent the entire “night” as an inpatient at a hospital from sunset of one day to sunrise the next day. The Court then ascertained the sunset and sunrise times of the dates in question by using The Old Farmer's Almanac. According to the Court, the plaintiff would have to prove that he was in the hospital from 5:02 pm of November 14th until 7:07 am of November 15th to

demonstrate that his condition qualified as a serious medical condition under FMLA requirements. The Court noted that the plaintiff was not formally admitted into the care facility until after midnight on November 15th.

The Appellate Court affirmed the decision using the “calendar day” approach. The Court held, “the time [Plaintiff] spent in the hospital did not rise to the level of an ‘overnight stay’ under 825.114 because he did not stay in the hospital for one calendar day to the next calendar day as measured by his time of admission and the time of discharge. The Court also provided dicta that any stay would require an eight (8) hour minimum.

Employers would be wise to review the case as it highlights the fact intensive nature of FMLA claims, and also provides insight regarding jurisdictional differences regarding statutory interpretation.

The case can be found at: <http://www2.ca3.uscourts.gov/opinarch/141239p.pdf>

Dalton v. ManorCare of West Des Moines, LLC 8th Cir. No. 13-3743 (April 7, 2015)

The Eighth Circuit Appellate Court affirmed summary judgment for the employer after the employee was unable to demonstrate a serious health condition, as required under the FMLA. After a nurse began suffering from weight gain and obesity, she received multiple disciplinary warnings, including absences from work. She was eventually terminated. Although the employee was diagnosed with Stage One Chronic Kidney Disease, the Court determined that the kidney malfunction was related to obesity, not a problem with the kidney functions themselves. Although the threshold for a serious health condition is generally quite low, the DOL has not declared obesity itself as a serious health condition.

Employers should carefully review any claims made under the FMLA to ascertain the medical basis for such a claim to determine eligibility. If the employee would have been more specific in pleading those conditions associated with obesity, such as the diagnosis of kidney disease or other related health effects, the Court may have made a different determination in this case.

This case can be found at: <http://caselaw.findlaw.com/us-8th-circuit/1697005.html>

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.