RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

September 2014

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 – Domestic Violence Leave Law Now in Effect

Massachusetts employees that are victims of domestic violence are now permitted to take up to 15 days of unpaid leave in a twelve month period. The law applies to those employers with 50 or more employees, and contains notice provisions requiring employer compliance. The statute also extends to family members of the victim, and may include such matters as treatment, counseling, legal assistance and/or court proceedings. Employers should be aware that the statute broadly defines a family member, and may include a spouse, those cohabitating, engaged, persons having a child together, parent, child, step-parent, step-child, sibling, grand-parent or grand-child, or guardian.

More information about the changes can be found at: http://blog.skoler-abbott.com/2014/08/26/massachusetts-new-domestic-violence-law-includes-leave-entitlement-for-certain-employees/

The bill itself can be viewed at: https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260

IMPACT TO YOUR PROGRAM WITH MATRIX: This will be tracked if requested by the employee. Our system and letters have been updated to reflect this new leave type.

Eugene, Oregon – Sick Leave Ordinance Passes

On July 1, 2015, all employers operating within the Eugene City Limits must provide sick leave to employees. The ordinance also impacts employees sent to Eugene to work, even though a business may not be based in the city. Although the ordinance has passed, administrative rules will be created to assist with the interpretation and enforcement of the ordinance.

Employees will earn one (1) hour of sick leave for every thirty (30) hours worked in the city. Employees shall be permitted to accrue a minimum of forty (40) hours of sick leave per year. Any employee that works 240 hours or more per year in Eugene is afforded protection under the ordinance.

For more information: http://www.eugene-or.gov/sickleave

IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact as this is a pay practice and not a leave entitlement.

San Diego, California – City Council Overrides Mayor's Veto of Sick Leave Ordinance

In a 6-3 vote, the San Diego City Council overrode the mayor's veto of the Sick Leave Ordinance originally passed on July 28, 2014. As noted in the August newsletter, beginning in 2015, San Diego employers will be required to provide five (5) days of paid sick leave per year. Sick pay will be accrued at 1 hour per 30 hours worked in city limits, with a 40 hour maximum (with annual carryover provisions). Sick leave may be taken in two (2) hour increments.

For more information regarding the city council vote:
http://www.shrm.org/legalissues/stateandlocalresources/pages/ca-san-diego-overrides-ordinance.aspx

IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact as this is a pay practice and not a leave entitlement.

Louisiana – District Court Judge Upholds Gay Marriage Ban

In Louisiana, a U.S. District Court Judge upheld the state's refusal to recognize same-sex marriages performed in other states. This type of decision has been a rare occurrence since the U.S. Supreme Court's decision in *Windsor*, and it is expected that the ruling will be appealed.

Employers, especially those in the Fifth Circuit Court of Appeals (Louisiana, Mississippi, and Texas), should continue to monitor developments to determine the potential impact on employment benefits.al

For more information regarding the city council vote: http://abcnews.go.com/US/wireStory/federal-judge-upholds-la-sex-marriage-ban-25231935

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact. If your company wishes to afford leave benefits to spouses of same-sex marriages performed in states where the employee would not be eligible for FMLA you can draft a "company" policy for this reason. If you would like for Matrix to manage this company policy please contact your sales representative or account manager.

Notable EEOC Disability News:

EEOC v. Arthur's Restaurant and Bar at: http://eeoc.gov/eeoc/newsroom/release/8-25-14.cfm

EEOC v. Savi Technology, Inc., at: http://eeoc.gov/eeoc/newsroom/release/8-7-14a.cfm

EEOC v. MPW Industrial Services, Inc. at: http://eeoc.gov/eeoc/newsroom/release/8-7-14.cfm

Reminder! Maryland Parental Leave Law to Take Effect October 1st

Maryland employers will have to provide up to six (6) weeks of unpaid parental leave under newly signed legislation in Maryland. The legislation will take effect on October 1, 2014.

IMPACT TO YOUR PROGRAM WITH MATRIX: Our system and letters have been updated to reflect this new leave type.

Notable Cases

Lupyan v. Corinthian Colleges, Inc.

This Third Circuit decision may have major implications for employers as court provided guidance with respect to the application of the mailbox rule when providing FMLA notice to an employee. The decision places a higher burden on employers to provide proof that an employee actually receives notice of FMLA rights.

In *Lupyan,* The employer failed to provide the employee with a notice of FMLA rights at a meeting, but subsequently mailed the notice to the employee. The employee was later terminated. A basis for the termination was that the employee failed to return after the exhaustion of FMLA leave. The employee denied ever receiving the FMLA notice via mail, and brought suit against the employer claiming a failure to provide notice and interference with FMLA rights.

The employer was granted summary judgment by the trial court, utilizing the Mailbox Rule. The traditional rule provides a presumption of receipt if it can be proved that the letter was mailed. On appeal, the Third Circuit Appellate Court determined that the Mailbox Rule does not provide conclusive proof, but only a rebuttable inference.

Consequently, the court determined that a letter mailed by regular mail, with no certified receipt, tracking number or signature, as well as a denial of receipt by the employee, creates a rebuttable presumption.

For employers in the Third Circuit (Delaware, New Jersey, Pennsylvania and the U.S. Virgin Islands), this ruling means that employers must be able to prove traceability of any form of mailed notice. Employers in all jurisdictions may be wise to make sure that any form of mailed communication is conducted utilizing certified mail or electronic receipts.

More information can be found at: http://law.justia.com/cases/federal/appellate-courts/ca3/13-1843/13-1843-2014-08-05.html and http://www.shrm.org/hrdisciplines/benefits/articles/pages/fmla-notices-mailing.aspx

Budhun v. Reading Hospital and Medical Center, Third Cir. App. Ct., No. 11-4625 (August 27, 2014)

An employee was granted FMLA leave for a hand injury. Part of the employee's job functions included typing. Following a brief absence, the employee returned to work with a note from her physician indicating "no restrictions." She advised her employer that she could work upon her return, but would not type "as fast as I used to." She was advised to revisit her physician and obtain a note for leave until she could perform "in the same capacity."

The employee's FMLA leave rights were to be exhausted on September 23, 2010, but her physician indicated that he intended on approving a return to work in November. However, the physician stated that she could return sooner if she felt better.

When the employee failed to return to work on September 23rd, the company shortly thereafter offered her position to another employee. The employee attempted to return to work on October 4th, but was advised that she had been replaced, was ineligible for transfer, and that she would be terminated if she could find another position at the hospital. In applying for another position at the hospital, she was to be treated as an outsider. The employer asked her to pick up her belongings and return her ID and keys on October 6th.

The employee remained on leave until November 9th (non-FMLA), and when she did not contact the employer at that time, the employer considered her to have voluntarily resigned. She subsequently filed suit claiming FMLA interference and retaliation claims. The District Court granted summary judgment to the employer, determining that the employee was not entitled to FMLA protections at the time she initially attempted to return to work because the employee claimed she was fully capable of working. Further, the Court determined that there was no nexus between her termination and the FMLA because she was terminated on November 10, 2010, two months after FMLA leave was exhausted. The employee appealed the Court's ruling.

The Appellate Court ruled that the doctor's note for a return to work without restrictions triggered the employer's obligation to reinstate. The Court noted that the determination of whether an employee can perform the essential function of a job is determined by a physician, not the employer. Consequently, the Appellate Court overruled the summary judgment of the FMLA-based claims.

Employers would be wise to review this decision as it comports with prevailing law in other jurisdictions. Additionally, the decision provides a good overview of the employment law and EEOC regulations.

More information can be found at: http://caselaw.findlaw.com/us-3rd-circuit/1676583.html See also http://www.post-gazette.com/business/legal/2014/09/02/Third-Circuit-Sets-FMLA-Return-to-Work-Standard/stories/201409020020

Cadenas v. Butterfield Health Care II, Inc., N.D. Ill., No. 12-c-07750 (July 15, 2014)

An Illinois federal district court ruled that an employee may have a pregnancy discrimination claim for anticipatory discharge after an employer terminated an employee at week fifteen (15) of her pregnancy for restrictions that were requested beginning week twenty (20) of the pregnancy. The employee was not entitled to FMLA leave, and the employer had a valid policy restricting light duty assignments. However, the employer's decision to take action before the actual restrictions were to take place prevented the granting of a motion to dismiss and may constitute pregnancy discrimination for anticipatory discharge.

More information can be found at:
https://www.docketalarm.com/cases/Illinois_Northern_District_Court/1--12-cv-07750/Cadenas_v._Butterfield_Health_Care_II_Inc._et_al/33/

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.