

Legislative Update

October 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 – Governor May Sign Legislation Impacting Leave

The California Legislature has recently passed legislation that may impact employee leave rights. The pending legislation is currently awaiting the governor's signature. If passed, the likely effective date of both pending bills would be January 1, 2016.

CFRA amendments. Currently pending is California Senate Bill 406, which would expand employee rights and coverage under the California Family Rights Act (CFRA) by expanding the definition of "child" to include the son or daughter of a domestic partner and removes the provision regarding age and dependent status of the child. The Act also expands the permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, or parent-in-law with a serious health condition, and will now include parent-in-law in the definition of "parent." There are also special provisions for "child bonding" leave, including circumstances in which both parents work for the same employer.

Family Partnership (school activities) and Kin Care amendments. The governor is also considering SB 579. This bill expands on the currently authorized reasons for which an employee can take job-protected time off work without fearing discrimination or discharge under the Family Partnership Act. The bill permits employees to take time from work to find, enroll, or reenroll a child or children into a school or with a licensed child care provider, or to address a child care provider or school emergency, in certain situations. The bill also revised certain provisions of the existing "Kin Care Law" to remain consistent with provisions under the paid sick days law to clarify that "family member" also includes individuals already covered under existing law.

Employers would be wise to monitor these bills for the governor's signature, and if so, to make any necessary changes to leave policy to maintain compliance.

California Senate Bill 579 can be reviewed at: <https://legiscan.com/CA/bill/SB579/2015>

IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact at this time as the law has not been passed yet. If passed, we will communicate the changes and train the Matrix employees on handling of claims according to the features of the law.

Pennsylvania – Pittsburgh Paid Sick Leave Ordinance Being Challenged

Pittsburgh City Council passed a Sick Leave Ordinance in August that has yet to go into effect. However, the Pennsylvania Restaurant and Lodging Association, as well as some local Pittsburgh area businesses, are seeking declaratory relief in state court to invalidate the ordinance. The challenge is based on an allegation that the ordinance violates the Pennsylvania Municipalities Act and the Pennsylvania Constitution.

Employers operating in Pittsburgh, PA should monitor developments.

For additional information: <http://www.natlawreview.com/article/pittsburgh-s-new-sick-leave-ordinance-challenged-state-court>

IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to Matrix programs. Matrix does not currently manage paid sick time.

Michigan – Ballot Initiative to Require Statewide Paid Sick Leave

Activists in Michigan have announced a ballot initiative that would require all Michigan employers to provide one hour of paid sick time for every 30 hours worked. Under the initiative, paid leave would be granted for personal or family health reasons, domestic violence, sexual assault, and school meetings related to a child's ailment or disability. Employers with less than ten employees will be required to provide up to 40 hours of paid sick leave per year. Larger employers would be required to provide up to 72 hours of paid sick leave.

The initiative is attempting to place the matter on the November 2016 ballot. Employers operating in Michigan would be wise to monitor developments.

The ballot initiative can be found at: <http://mitimetocare.org/earned-sick-time-petition>

IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to Matrix programs. Matrix does not currently manage paid sick time.

Louisiana – New Orleans Ordinance Impacts Leave

The New Orleans Living Wage Ordinance will go into effect on January 1, 2016. Aside from requiring that city contractors and grant recipients provide a minimum wage of \$10.55/hour, the ordinance also requires that employers provide employees seven paid sick days per year. An employer that pays 30% above the minimum wage requirement will be exempt from the paid sick leave requirement.

Employers operating in New Orleans would be wise to review policies to maintain compliance.

More information can be found at: <http://www.nolacitycouncil.com/content/display.asp?id=54&nid={0CC76E46-4CAE-4A20-9411-82DF8E05A87A}>

IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to Matrix programs. Matrix does not currently manage minimum pay or paid sick time.

Arkansas – Fayetteville Enacts Ordinance 5781

Fayetteville, Arkansas recently passed the Uniform Civil Rights Protection Ordinance. The ordinance will extend rights to the LGBT community, and will take effect on November 7, 2015. The ordinance provides: “The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender and disability as recognized and protected by the Arkansas Civil Rights Act of 1933.”

The ordinance exempts employers with less than nine employees, a church, religious or day school, or any other religious organization. The ordinance could have an impact with employers regarding employee benefit rights and protections.

The ordinance can be found at: <http://www.fayetteville-ar.gov/DocumentCenter/Home/View/6529>

IMPACT TO YOUR PROGRAM WITH MATRIX: There is no impact to Matrix programs. Matrix does not manage local ordinances.

Notable EEOC Disability News:

EEOC v. E-MDS, Inc., Civil Action No. 1-15-cv-00860 (ADA – Pregnancy and Disability) (EEOC sued employer for disability and pregnancy discrimination; company failed to provide disabled pregnant employee with accommodation and subsequently fired her while on maternity leave,):

<http://www.eeoc.gov/eeoc/newsroom/release/9-25-15a.cfm>

EEOC v. Physicians’ Specialty Hospital, Civil Action No. 5-15-cv-05237 (ADA – Denial of Leave) (EEOC sues hospital that refused to accommodate nurse with seizure disorder): <http://www.eeoc.gov/eeoc/newsroom/release/9-30-15.cfm>

EEOC v Dialysis Clinic, Inc., 2-14-cv-01623 (ADA – Denial of Extended Leave) (clinic fired nurse based on clinic's inflexible medical leave policy; settles EEOC lawsuit and agrees to pay \$190,000 and provide training, revised policies and more): <http://www.eeoc.gov/eeoc/newsroom/release/9-14-15.cfm>

Notable Case

Every day counts toward FMLA entitlement

Wages v. Stuart Management Corp., 8th Cir. No. 14-2793 (August 10, 2015)

The employee was employed as a caretaker at an apartment complex. Her job duties included vacuuming, cleaning, mopping, washing windows, dusting, and snow removal. The employee began employment in 2008 and had an excellent work record.

In the summer of 2009, the employee learned that she was pregnant. Her physician informed her that the pregnancy would be high risk. The employee alleged that she subsequently contacted the employer about FMLA and other leave. In October 2009, the employee presented a note indicating that she was restricted from vacuuming and mopping. These duties were assigned to other employees.

In November 2009, the employee presented another doctor's note indicating that she could perform all duties other than snow removal. The employer contacted the physician's office for clarification, and one of the doctor's assistants informed the company that the employee was also prohibited from vacuuming and mopping. The employee stated that the physician informed her directly that she could vacuum and mop.

Later in November, the employee began experiencing abdominal pain and was required to miss some work and work a reduced schedule. The employer subsequently terminated the employee, stating that the organization was "unable to accommodate the work restrictions provided by the physician."

After exhausting administrative remedies, the employee filed suit alleging a violation of FMLA rights, Title VII, the Minnesota Parenting Leave Act, and the Minnesota Human Rights Act. The district court granted summary judgment to the employee with respect to the FMLA claims, and summary judgment to the employer with respect to the Title VII, MPLA and MHRA claims.

The employer argued that FMLA claims would be inappropriate due to the fact that the employee was terminated one day before her one year anniversary of work. The district court determined that the employee could have utilized "bridge the gap" leave to carry her to the eligibility date.

The district court also determined that the employee provided proper notice of a need for FMLA benefits by providing the doctor's note within one day of receiving it, and that the content was sufficient to place the employer on notice. The employer ultimately appealed the granting of FMLA claims, as well as the award of damages.

The Appellate Court determined that the employee did work for an entire year by working on November 16, 2009, although her start date was November 17, 2008. The Court reasoned that November 17, 2009, would not be the last day of her first year, but rather the first day of her second year. The Court also noted that the doctor's note referenced pregnancy, thereby placing the employer on notice of a potential need for FMLA leave. Consequently, the Court affirmed the district court's granting of summary judgment on the employee's FMLA entitlement claim and retaliation claim.

The court determined, "The FMLA is designed specifically for situations like this, where a low-wage employee, such as Wages, needs temporary protection."

This case can be found at: <http://media.ca8.uscourts.gov/opndir/15/08/142793P.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.