

## Legislative Update

**May 2016**



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 – Increase in Benefits under Paid Family Leave***

California Governor Jerry Brown has signed Assembly Bill 908, increasing the benefit rate currently provided under the California Paid Family Leave program. Effective January 1, 2018, the amount of wage replacement will increase from 55% to 60-70%, depending upon defined employee income levels. The bill also eliminates the 7-day waiting period for commencement of benefits for claims arising on and after January 1, 2018.

For more information: <https://www.gov.ca.gov/news.php?id=19379>

The bill can be found at: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB908](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB908)

***IMPACT TO YOUR PROGRAM WITH MATRIX: This change will have no impact on program management other than increasing the amount of benefits paid in accordance with the bill.***

### ***California – San Francisco Requires Paid Parental Leave***

Unanimous approval of an ordinance by the San Francisco Board of Supervisors will require up to six weeks of fully paid parental leave for the purposes of bonding with a new child. This makes San Francisco the first city to require employer-paid parental leave., Designed to work with California's paid family leave benefits, employers will be responsible for making up the difference between the amount the employee receives under the state program and the employee's full rate of pay (subject to certain maximums). The law provides a phase-in period dependent upon the size of the employer. It will be effective for employers with 50 or more

employees on January 1, 2017; for employers with 35 or more employees on July 1, 2017; and for employers with 20 or more employees on January 1, 2018.

Covered employees are those who: (1) are employed by the employer from whose work leave will be taken at least 180 days prior to the leave; (2) work at least 8 hours per week in the geographic boundaries of San Francisco; (3) work at least 40 percent of their weekly hours in San Francisco; and (4) are eligible for California Paid Family Leave for the purposes of bonding with a child.

Covered employers will include employers with 50 or more employees effective January 1, 2017; employers with 35 or more employees effective July 1, 2017; and for employers with 20 or more employees effective January 1, 2018. The employees' work location is immaterial to determining whether an employer is covered, but only those employees who meet the above criteria will be eligible for benefits.

City and governmental entities are exempted from the law, as are some employees covered under certain collective bargaining agreements.

Employers conducting business or employing individuals who work in San Francisco would be wise to review the provisions of the ordinance.

For a more detailed discussion of the ordinance, check out our Matrix-Radar blog post [here](#).

The ordinance can be found at: <https://sfgov.org/olse/paid-parental-leave-ordinance>

***IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs. Leave laws at the city and county levels are not currently managed by Matrix.***

## ***Department of Labor – New FMLA Employer's Guide Published***

The Department of Labor has issued a new Employer's Guide to the Family and Medical Leave Act to assist employers in interpreting and administering the requirements under the law. The publication provides the essential framework of the FMLA, as well as information regarding employer and employee obligations under the Act. The Department of Labor has also indicated that a new FMLA poster may also be published in the near future.

For a more detailed discussion of the Guide and examples of the varied content styles, check out our Matrix-Radar blog post [here](#).

The guide can be found at: <http://www.dol.gov/whd/fmla/employerguide.pdf>

***IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs because the DOL guide does not make any changes to current FMLA regulations, but rather is intended as guidance for employers to consult in administering their leave programs.***

## **California – Los Angeles Council Proposes Paid Sick Leave**

The Los Angeles City Council has proposed a paid sick leave ordinance to be drafted by the City Attorney, which will provide for six days of paid sick leave (earned at the rate of 1 hour for each 30 hours worked), with up to 72 hours of carryover annually. If adopted, the ordinance could go into effect as soon as July 1, 2016 for those with 25 or more employees. Employers conducting business in the Los Angeles area would be wise to monitor developments.

For more information: <http://labusinessjournal.com/news/2016/apr/19/l-council-passes-paid-sick-leave-policy/>

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## **Illinois – Chicago Mayoral Task Force Recommends Paid Sick Leave**

The Chicago Working Families Task Force Report, created after a study conducted by the mayoral task force, has recommended that employees working in Chicago should be eligible to earn up to five days of paid sick leave per year. The report also recommends a 20-hour rollover provision for unused leave. The report could renew efforts at creating mandated paid sick leave within the city. Employers operating in the Chicago area would be wise to monitor developments.

For more information: <http://www.chicagotribune.com/business/ct-paid-sick-leave-task-force-0403-biz-20160401-story.html>

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## **Notable EEOC Disability News:**

*EEOC v. RockTenn Co. and RockTenn Services, Inc., No. 1:14-cv-00973- RockTenn settled this lawsuit for \$187,500. The EEOC accused RockTenn of violating the ADA by terminating the plaintiff's employment while he was on a short-term disability leave and had a reported date certain for his return to work. According to the press release, the plaintiff had only begun working as the HR Manager 3 months prior to the commencement of his leave.*

*The press release is available at <https://www.eeoc.gov/eeoc/newsroom/release/4-14-16.cfm>*

*EEOC v. Neenah Paper, Inc. No. 2:15-cv-00113 Neenah Paper settled this lawsuit for \$33,000. The EEOC contended Neenah violated the ADA by refusing to return the plaintiff (who had a seizure in the workplace) to work despite clearance from his personal physician to do so and requiring, once he did return to work, to take his medication under the supervision of plant medical personnel and co-worker witnesses. The press release is available at: <https://www.eeoc.gov/eeoc/newsroom/release/4-7-16.cfm>*

*EEOC v. Bank of America Corporation, et al*, No. 2:15-cv-01754-GMN-VCF—B of A settled this lawsuit, which accused them of violating the ADA by not providing a sign language interpreter to the plaintiff, but rather using alternate methods that were not effective. The Press Release is available at: <https://www.eeoc.gov/eeoc/newsroom/release/4-6-16.cfm>

***Notable Case – Several lessons in ONE opinion!***

***Individual supervisor liability; FMLA certification notice requirements; and more***

*Graziadio v. Culinary Institute of America, et al.*, 2<sup>nd</sup> Cir. No. 15-888 (Mar. 17, 2016)

Graziadio had been employed by Culinary Institute of America (“CIA”) for several years when she requested consecutive leaves of absence under the FMLA to deal with different medical issues involving each of her sons. The first leave, to care for her son hospitalized with previously undiagnosed Type I diabetes, was uneventful. The second leave, to care for her other son who fractured his leg and required surgery, was not.

With respect to this second leave, Graziadio reported her need for leave and indicated the amount of leave she would need, specifically a reduced work schedule, and asked whether CIA needed any further documentation from her. Indeed, she did so repeatedly and in a painful comedy of errors, CIA continued to claim it needed more information, without specifying what was needed to approve her leave. CIA failed to provide Graziadio with a certification of health care provider or other form specifying the information it required. Instead, it gave her a pamphlet from the DOL explaining the FMLA, presumably for her to figure out what she needed to provide to her employer. In an attempt to satisfy CIA, Graziadio provided a note from her son’s doctor indicating the nature of his condition, that he needed care from his mother, and the approximate duration. CIA rejected this documentation as insufficient but did not specify what more was needed.

Throughout, the CIA Director of HR refused to let Graziadio return to work until she had provided the mystery medical documentation regarding her son’s serious health condition (a curious position since it was not her *own* health condition at issue, and one not supported by the FMLA). The Director told Graziadio she needed to come in to talk about the situation and Graziadio indicated she could come in at any time, at the Director’s convenience, recognizing that the Director’s schedule was busier than her own. No meeting time was ever set by the Director.

Eventually CIA told Graziadio that she needed to provide a certification from her health care provider, but it then compounded its errors by allowing her only 7 days to do so. After significant unproductive back and forth between Graziadio and the Director of HR for CIA, during which Graziadio made it clear she was ready to return to work and sought to determine what CIA needed regarding her leave, CIA fired her for “abandoning her position.”

In its decision, the Second Circuit Court of Appeals partially reversed the lower court’s decision to grant summary judgment in favor of CIA. Specifically, the court concluded that Graziadio was entitled to a jury trial on her FMLA interference claims and, notably, that the HR Director could be personally liable for any FMLA violations.

## Lessons for employers.

This case is a strong reminder about how important it is for your personnel to be well-versed in the FMLA requirements. CIA made several FMLA management mistakes, including:

- failing to give Graziadio notice of the specific medical documentation it required;
- failing to provide the amount of time required by the FMLA regulations to return the documentation once it was specified (15 days); and
- requiring Graziadio to provide the medical documentation before it allowed her to return to work.

And in a conclusion that seems fitting, the HR Director faced personal liability for her mismanagement of the FMLA claim. One wonders if she still has a job.

*MATRIX CAN HELP! Employers have numerous obligations to provide notices to employees under the FMLA, including the information, in this instance, that the healthcare provider for her son needed to complete to support FMLA. Moreover, if an employer believes that the certification of that healthcare provider is insufficient, the FMLA provides tools for the employer to require the employee to seek that information to support FMLA entitlement.*

*Matrix's leave management services are designed to relieve employers of these administrative challenges. Matrix will provide the required notices and forms to an employee who has requested FMLA leave, review the certification to ensure it is complete and sufficient, and track the employee's leave usage against the approved frequency and duration. For information please call 800-866-2301.*

This ruling can be found at: <http://caselaw.findlaw.com/us-2nd-circuit/1729198.html>

***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.***