RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

July 2016

ENACTED LEGISLATION

Illinois – Chicago Passes Paid Sick Leave

The Chicago City Council adopted the Chicago Minimum Wage and Paid Sick Leave Ordinance, which takes effect on July 1, 2017. Under the Chicago Paid Sick Leave law, employees will accrue one hour of sick leave for every 40 hours worked, beginning on the later of July 1, 2017, or their first calendar day of employment after July 1, 2017. Employees may earn up to 40 hours in a 12-month accrual period (the accrual period starts with the date the employee starts to earn paid sick leave, i.e. from and after their first 40 hours of work). At the end of the employee's 12-month accrual period, he or she can carry over up any unused, accrued leave, up to 20 hours. For employers subject to the FMLA, their employees may carryover up to 40 hours to the following 12-month period. Chicago employees can begin to use their paid leave after 180 days of employment. The employer can require that leave be taken in a "reasonable minimum increment."

Permissible purposes for Chicago employees to use their paid leave include for their own or a family member's illness, injury, treatment, diagnostic or preventive care; if the employee or a family member is a victim of domestic violence or a sex offense; or if a public official closes the employee's place of business (or the employee's child's school) due to a public health emergency. The term "family member" is very broadly defined by the ordinance.

Under certain circumstances of "reasonably foreseeable" need for leave, the employer can require advance notice and, for continuous leave of 3 days or more, the employer can require certification that the leave was taken for a covered reason.

Chicago employers are required to post notice of employees' leave rights in a conspicuous place in each of its Chicago facilities. In addition, Chicago employers must provide notice to employees of their paid sick leave rights with their first paychecks. Chicago's Department of Business Affairs and Consumer Protection will be publishing a form of notice that employers can use for this purpose.

The law also protects employees from discrimination and retaliation for exercising their rights to take leave, and includes a private right of action.

Chicago employers should review the Paid Sick Leave Ordinance in detail, which can be accessed here http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il at Title 1, Chapter 1-24.

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs; Matrix does not manage city or county laws.

PROPOSED LEGISLATION
Minnesota– St. Paul Discusses Paid Sick Leave

The St. Paul city government is currently discussing a mandatory "Earned Sick and Safe Time" ordinance, which is proposed to apply citywide, to both public and private employers. The city is currently evaluating a draft of the ordinance, and a public comment period on the draft ordinance is underway, and will end on July 14th. The City Council is expected to be presented with the results in August or September.

The proposed ordinance closely resembles the recently-passed Minneapolis paid sick leave ordinance, with one notable exception. The Minneapolis ordinance was adopted to be applicable to employers with six or more employees, while the proposed St. Paul ordinance makes no exceptions based on number of employees.

Employers conducting business in the St. Paul area should monitor the actions of the St. Paul City Council over the late summer months.

Additional information can be found at: http://www.twincities.com/2016/06/22/st-paul-paid-sick-leave-proposal-human-rights/

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs; Matrix does not manage city or county laws.

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 this new law.

Notable EEOC News

Guardsmark – GINA and ADA Discrimination Settlement (6/23/16). Applicants for employment in positions at Guardsmark, a security company, filed EEOC charges in both the Little Rock, Arkansas and Honolulu, Hawaii, EEOC offices. These charges were filed in 2011 and 2012. The EEOC accused Guardsmark of violating the ADA and GINA (the Genetic Information Nondiscrimination Act) by requiring applicants to complete questionnaires regarding their own, and their family members', medical histories. The charges were settled for $329,640, plus Guardsmark agreed to enter into a 2 year conciliation agreement with the EEOC, under which they removed the medical history language from their pre-employment process.

EEOC v. The Kroger Company of Michigan –ADA Accommodation Settlement. The Kroger grocery store chain settled a lawsuit filed by the EEOC which accused Kroger of failing to provide a reasonable ADA accommodation to an employee with a back impairment, who was given a temporary reassignment to a cashier position, but was fired after her restrictions were made permanent. https://www.eeoc.gov/eeoc/newsroom/release/6-1-16.cfm

EEOC v. Liberty Chrysler, Jeep, Dodge, LLC. Dealerships settled an EEOC lawsuit of disability discrimination on behalf of employee who was fired after being diagnosed with multiple sclerosis)
https://www.eeoc.gov/eeoc/newsroom/release/6-16-16a.cfm

Notable Case

Mary Ann Dominick v. Wal-Mart Stores, Inc. (D.Ariz. 6/28./2016) 2016 WL 3519780

The plaintiff, Mary Ann Dominick was employed in a stocker position for Wal-Mart and had been for over 6 years when she complained to management of an allergic reaction to floor waxing products that were used during her shift. She requested an accommodation under the Americans with Disabilities Act (ADA) that she be assigned at least 6 aisles away from any crew that was using waxing products. Wal-Mart granted this request; however, in her lawsuit, Dominick alleged that her management was frustrated by her request and sought to thwart it by assigning her work that she felt violated the accommodation she had been granted.

Her complaints led Wal-Mart to require her to submit a second request for accommodation, this time having her list the products to which she was allergic, and a list of departments in which she believed she could work. After she did so, Wal-Mart rejected her second request for ADA accommodation on the basis that they could not guarantee she would not come into contact with the chemicals on her list, but offered her a mask she could use while at work. She declined, because she believed this would not be an effective accommodation.

Dominick sustained a work-related injury and took leave to have surgery and recover. At the end of her medical leave, she had lifting restrictions. Her management told her they could not accommodate her lifting restrictions, and she was placed on a continuous leave of absence.

Wal-Mart was granted summary judgment on Dominick's claim that it failed to engage in the interactive process in good faith. However, Dominick presented evidence that her supervisors assigned her to work in violation of the accommodation she had been granted and refused to consider providing her with a light duty assignment after she returned from treatment for her work-related injury. As a result, the court concluded that Dominick was entitled to proceed to a jury trial on her claim that Wal-Mart retaliated against her when her management gave her work assignments in close proximity to the waxing crews, refused to grant her light duty, and placing her on medical leave when she had lifting restrictions.

The Dominick case demonstrates the value of providing training to all managers and supervisory personnel on the Americans with Disabilities Act. The facts of the case showed that Wal-Mart has HR personnel who understand the ADA, but ultimately, the supervisor needs to be sure that he or she understands the accommodation granted to the employee and takes great care to avoid any actions that might constitute interference with the effectiveness of the accommodation or that could provide a basis for a claim of retaliation against the employee for exercising her rights to request ADA accommodations.

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.