

Legislative Update

April 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.

Vermont – Governor Signs Act Requiring Paid Sick Leave

Vermont Governor Peter Shumlin has signed the bill requiring paid sick leave, making Vermont the fifth state to pass such legislation. The law will impact all private employers, and cover employees working 18 hours or more per week. The phase-in period of the law for employers with five or more employees in Vermont will begin on January 1, 2017. For Vermont employers with five or less employees, the phase-in period will begin on January 1, 2018. Employers will initially be required to provide up to 24 hours of paid sick leave per year, but the amount of paid sick leave will increase to 40 hours beginning January 1, 2019. Employers operating in Vermont would be wise to review the specific provisions of the law, provided below:

The law can be found at: <http://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0187/H-0187%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>

See also: <http://wamc.org/post/vermont-governor-signs-bill-requiring-employers-provide-paid-sick-leave#stream/0>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs, Matrix does not manage paid sick leave.

California – Santa Monica Paid Sick Leave Ordinance

The Santa Monica City Council has previously adopted a minimum wage and paid sick leave ordinance that is scheduled to go into effect July 1, 2016. Employees will earn one (1) hour of paid sick leave for every thirty (30) hours of work. Employers with 25 or fewer employees will provide up to 40 hours of paid sick leave, while employers with more than 25 employees may be required to provide up to 72 hours of leave.

Employees may begin using accrued leave 90 days after the start of employment. As there are posting requirements, as well as special provisions regarding collective bargaining agreements and hotel employers, any organization with employees in Santa Monica is advised to review the provisions of the ordinance.

The ordinance can be found at: <http://www.employmentlawworldview.com/files/2016/03/a-law.pdf> See also: <http://www.lexology.com/library/detail.aspx?g=62f67805-f3f5-4f79-8f24-32091f396cd1>

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New York – Agreement for Paid Family Leave Plan

New York Governor Andrew Cuomo has announced that there is an agreement between legislators to grant the longest paid family leave in the United States- twelve (12) weeks. Starting in 2018, employees will be eligible for leave after six (6) months of employment. Family leave will be provided for qualifying circumstances, including child care, the employee's own serious health condition and that of a qualifying family member, and for family matters arising from a requirement for an employee to report for active military service. Funding for the leave will be provided by authorized deductions from employees' pay.

As more specific information will be forthcoming soon, employers would be wise to monitor developments in New York.

Additional information regarding the proposal can be found at: <https://www.governor.ny.gov/news/governor-cuomo-and-legislative-leaders-announce-agreement-2016-2017-state-budget> See also: <http://www.wsj.com/articles/new-york-reaches-deal-on-budget-and-minimum-wage-1459482584>

IMPACT TO YOUR PROGRAM WITH MATRIX: No immediate impact to Matrix programs, as this program would take effect in 2018.

New Jersey – Paid Family Leave Issues

Some legislators and groups have alleged that New Jersey employers and government officials have not done enough to educate New Jersey employees of their rights under the state's paid family leave law. The current law provides up to six (6) weeks of leave, with employees receiving two-thirds of their pay, up to a maximum of \$524 per week, during their leave time. Some recent research claims that a majority of respondents had never heard of the paid family leave law, and were never made aware of it by their employers. As this law requires employers to provide specific notice to eligible employees including: posting conspicuously posting a notice of Paid Family Leave Rights, using the form issued by the NJ DOL, and providing a written copy of the notice to each employee at the time of their hiring and when an employee notifies his or her employer of the need for such leave, it is important that NJ employers follow these notice requirements.

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Reminder - Seattle Paid Sick Leave Rights Law

Seattle significantly amended its sick leave ordinance, which in addition to affording eligible employees that leave, provides for a private cause of action for adverse employer actions regarding an employee's exercise of those sick leave rights. The amendments become effective on April 1, 2016, for employers with 50 or more employees, and on April 1, 2017 for other employers. Employers operating in Seattle would be wise to review the changes.

Additional information regarding the Seattle ordinance can be found at: <http://www.seattle.gov/laborstandards/paid-sick-and-safe-time>

IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix programs, Matrix does not manage paid sick leave.

Notable EEOC Disability News:

EEOC v. AT&T, Case 3:11-cv-01964-CCC (ADA – Disability Discrimination), in which the EEOC announced a settlement to an AT&T employee in Puerto Rico whose request for a reasonable accommodation under the ADA was essentially ignored, which cost AT&T \$250,000 and rendered them subject to an extensive consent decree with the EEOC. For more information, please see <http://www.eeoc.gov/eeoc/newsroom/release/3-2-16.cfm>

What You Should Know About the EEOC and the Enforcement Protections for LGBT Workers (Including Discrimination Claims), which elaborates on the EEOC’s position that gender identity and expression are protected from sex discrimination under Title VII and the EEOC intends to use this interpretation to enforce these rights against employers who take adverse actions against employees based on their gender identity or gender expression. Please see: http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

Notable Case

Wheat v. Fla. Parish Juvenile Justice Comm., 5th Cir. No. 14-30788 (Jan. 05, 2016) E.D. La.

Plaintiff began employment with the Defendant in 2000. She was promoted to the position of JDS Officer, then to Shift Supervisor in 2005. In 2008, she became the Assistant Director of Female Services.

The plaintiff took FMLA leave in 2009 to undergo surgery. She was terminated for failing to return to work at the expiration of her leave. The employee filed a FMLA claim and was subsequently reinstated after that suit was settled. She returned to employment at a lower-ranking position, as a supervisory position was unavailable at the time. However, she was paid her previous salary. On two occasions the employee declined advancement to supervisory positions after her return to work because she did not want to assume additional duties and wanted to maintain eligibility for overtime pay.

In November 2011, the plaintiff filed an “Unusual Occurrence Report,” alleging inappropriate sexual advances from a 12 year-old female inmate. The plaintiff expressed dissatisfaction with the disciplinary measures taken against the inmate. In January 2012, the plaintiff had a physical altercation with another inmate, during which she had to be restrained after making threats against that inmate. Subsequently, the plaintiff’s employment was terminated.

After pursuing a claim with the EEOC, the plaintiff then filed suit, alleging, among other things retaliation under the FMLA. The District Court granted summary judgment to the employer.

The Appellate court reversed the grant of summary judgment; the plaintiff was able to present evidence that the employer had a history of inconsistent employment actions in the discharge of employees for mistreating juveniles. Consequently, the Court found that a material fact as to whether, “but for exercising her rights the

plaintiff would have been discharged.” This case demonstrates the need for consistent disciplinary action against similarly-situated employees who are determined to have violated employer rules or policies.

This ruling can be found at: <http://www.ca5.uscourts.gov/opinions%5Cpub%5C14/14-30788-CV0.pdf>

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.