

## Legislative Update

*February 2014*

The changes outlined in this Legislative Update do not require modification to Matrix's processes, practices, written or verbal employee communications.

### **Vermont – Flexible Work Requirements Now in Effect**

The flexible work requirements of Vermont's Act 31 of 2013, the amended Vermont Equal Pay Act, are in effect as of January 2014. The law permits employees to request a flexible work arrangement, and to receive protection from retaliation for making such a request. These requests may include alternative work schedules, job sharing, or working from home.

More information available at: <http://www.vnews.com/news/10019974-95/vt-law-targets-wage-gap>

### **New York City – Pregnancy Accommodations Now Required**

As of January 30, 2014, The Pregnant Workers Fairness Act requires New York City employers to provide reasonable accommodations to pregnant employees, or to employees experiencing issues related to pregnancy or childbirth. The law pertains to employers with at least four (4) employees.

Accommodations may include bathroom breaks, leaves for disability related to childbirth, breaks for water intake, rest from manual labor, avoidance of ladders, and other similar accommodations. California, Connecticut, Maryland and Texas also mandate accommodations for pregnant employees.

More information is available at: <http://www.lexology.com/library/detail.aspx?g=5fbf8430-4fc5-494f-a284-07ca9dfafa49>

### **Jersey City Earned Sick Time Leave Ordinance Takes Effect**

Jersey City's Earned Sick Time Law became effective on January 24, 2014. The law requires that employers with at least ten (10) employees operating in Jersey City must provide at least five (5) paid sick days annually, while employers with less than ten (10) employees must provide at least five (5) unpaid sick days annually.

More information is available at: [http://www.cityofjerseycity.com/uploadedFiles/For\\_Businesses/Page\\_1\\_legal.pdf](http://www.cityofjerseycity.com/uploadedFiles/For_Businesses/Page_1_legal.pdf)

## **Portland – Protected Sick Time Ordinance Now in Effect**

Employees in Portland, Oregon may now earn sick time to use when they or a family member is sick, injured, or in need of preventive healthcare. The ordinance went into effect on January 1, 2014.

More information available at: <http://www.portlandoregon.gov/sicktime/>

## **Same Sex Marriage Update**

Virginia Attorney General Mark Herring is challenging the Commonwealth's current ban on gay marriage. A federal judge will soon hear arguments on the matter. In 2006, Virginia approved a State Constitutional Amendment defining marriage as between a man and a woman. In the event that the Amendment is deemed unconstitutional, it would be the first state in the Confederate South to permit gay marriage. Gay marriage bans have previously been struck down in Utah and Oklahoma, but the rulings are now stayed while the issue is being appealed. Employers should pay careful attention to developments as the outcome may have significant implications for workplace matters, including benefits.

More information available at: <http://news.yahoo.com/virginia-ag-fight-state-39-gay-marriage-ban-160529872.html>

## **Time Off for Snow Days**

Many employers may be facing weather-related workplace issues due to the inclement weather impacting much of the nation. There may be issues related to whether the employee must report, be paid, or can be forced to use vacation time during a weather-related absence. Much depends upon employer policies, employee status under the FLSA, and other variables. Specific information regarding snow day absences can be found at: <http://money.usnews.com/money/blogs/outside-voices-careers/2014/01/22/how-should-employers-handle-snow-days>

## **IRS Notice 2014-1**

The Internal Revenue Service has issued Notice 2014-1, providing guidance for issues related to cafeteria plans, flexible spending accounts, and health savings accounts for same-sex spouses. The Notice is designed to provide clarification as a result of the *Windsor* ruling. The notice can be found at: <http://www.irs.gov/pub/irs-drop/n-14-01.pdf>

## **Connecticut Grocery Chain Settles with EEOC**

A Connecticut grocery chain provided an application that asked if applicants had, "any health problems?" Applicants were later asked at interviews whether applicants had any health or physical problems, and what medications they were using. The company also terminated an employee shortly after the employee experienced an epileptic seizure at work, despite prior successful job performance and medical documentation that the employee was qualified to perform the job. The EEOC maintained that such conduct is a violation of the Americans with Disabilities Act, including the prohibition of disability related inquiries prior to an offer of approval. The company has agreed to pay \$25,000 and perform several other remedial measures, including adequate posting of employee rights and changes to the hiring process. . More information can be found at: <http://www1.eeoc.gov/eeoc/newsroom/release/12-4-13.cfm>

## Notable Cases

*Smothers v. Solvay Chemicals, Inc.*, 10<sup>th</sup> Cir. App. Ct. No. 12-8013 (Jan. 21, 2014)

The employee was a mechanic that utilized intermittent FMLA leave following a neck and back injury. His performance evaluations were initially good, but management began to complain about the use of leave. Eventually, performance evaluations were negative due to absenteeism. He was also denied a promotion on the basis of his absences. The employee was subsequently terminated following an incident at work.

The employee filed claims in federal district court alleging retaliation for exercising rights under the FMLA, discrimination violations under the ADA, and breach of implied contract under Wyoming law. The employer was granted summary judgment by the District Court, and the employee appealed to the Tenth Circuit Appellate Court.

The court ultimately overturned the summary judgment, determining that the employee introduced significant evidence to create a genuine issue of fact as to whether the employer was engaging in pretext and terminating employment for improper purposes in violation of the FMLA and ADA. The case can provide guidance to employers in documenting and initiating termination proceedings for an employee with FMLA and/or ADA issues.

The case can be found at: <http://www.ca10.uscourts.gov/opinions/12/12-8013.pdf#!>

*Henschel v. Claire Co. Rd. Comm.*, 6<sup>th</sup> Cir. No. 13-1528 (Dec. 13, 2013)

The Plaintiff worked as excavator operator for Defendant. The Plaintiff lost his left leg in a non-work related motorcycle accident and was prohibited from returning to work. When attempting to return to work, he was terminated and advised that termination was due to an inability to transport an excavator to a work site due to his injury. The Plaintiff eventually filed an EEOC complaint, and federal lawsuit, alleging a violation of the ADA.

The District Court granted summary judgment for the Defendant, determining that transporting the excavator to the work site was an essential function of the job; that Plaintiff was unable to haul the excavator; and that a reassignment to a year-round truck driver position was not a reasonable accommodation.

The Appellate Court reversed the summary judgment on the issue of whether hauling the excavator was an essential function of the excavator operation position. The Court affirmed the finding that year-round reassignment was not a reasonable accommodation. The case was remanded to determine whether an issue of material fact exists whether the Plaintiff was qualified, with or without accommodations, to perform the functions of the excavator operator position.

The case can be found at: <http://www.ca6.uscourts.gov/opinions.pdf/13a0343p-06.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.***