

## Legislative Update

*March 2014*

**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.**

### **Newark, N.J. – Sick Leave Ordinance May Be Coming Soon**

The Newark City Council approved a sick leave ordinance in late January that would require private employers with greater than ten (10) employees to provide five paid sick days per year. Employers with less than ten (10) employees would provide three sick days per year, with certain exceptions. Full and part-time employees would earn one hour of sick leave for every thirty (30) hours of work. The Newark ordinance is more expansive than the recently enacted Jersey City ordinance, requiring paid sick days for all employees, rather than unpaid sick time for small employers.

There are also special provisions regarding collective bargaining agreements, carry over sick days, notice and recordkeeping, retaliation, right to sue, and permissible reasons for taking leave. If signed by the mayor, the ordinance would take effect 120 days after enactment.

More information available at: <http://www.nj.com>

### **District of Columbia – Amendments to the Accrued Sick Leave Act of 2008 to Take Effect**

The District of Columbia Accrued Sick Leave Act of 2008 is to be expanded to include the immediate accrual and use of leave after 90 days, the expansion of leave to tipped restaurant and bar employees, alters provisions on the retention of accrued leave, enhances retaliation protection, creates new recordkeeping requirements, and adds new penalty provisions. The Mayor has signed the Amendments, and the Amendments will become effective after a fiscal impact statement is incorporated into the D.C. budget and published in the D.C. register.

More information is available at: <http://www.lexology.com/library/detail.aspx?g=687fc82c-4213-4e4a-b-1f0-7d5f4390d94d>.

### **Possible Changes to the New York City Sick Leave Act**

New York Mayor Bill de Blasio and Council Speaker Melissa Mark-Viverito have proposed changes to the recently enacted New York City Sick Leave Act. These proposed changes include: lowering the threshold of covered employers from 15 to 5 employees; expanding the definition of "family members"; eliminating the exemption for manufacturing employers; and, expanded enforcement provisions.

More information is available at: <http://m.nydailynews.com/1.1582699#bmb1>

## **Montana –Montana Supreme Court Rules That Employers May Modify Sick Leave Bank**

The Montana Supreme Court has ruled that employers who created a continued illness bank pay-out benefit for employees may change the benefit policy since the employer expressly reserved the right to modify or terminate the benefit. Employers ended the pay-out benefit to employees with less than 25 years of service in 2008. Employees subsequently brought a class action lawsuit alleging a breach of employment contract and the covenant of good faith and fair dealing, as well as a violation of the Montana Wages and Wage Protection Act. The District Court granted summary judgment on the claims, and the Montana Supreme Court affirmed.

The Court proclaimed, “The law does not prevent an employer from reserving the right to end a fringe benefit previously extended to its workers, so long as that benefit has not been made an express term of the employment contract, the employer provides the promised benefits while they are in effect, and the employer provides notice before the benefit is terminated.

More information available at: *Chipman v. Northwest Healthcare Corp., Mont., No. 13-0329 (January 21, 2014)*

## **DOL to Propose New Definition of “Spouse” For FMLA Purposes**

The Wage and Hour Division of the Department of Labor has previously promised to provide a proposed revision to the definition of the term “spouse” under the Family and Medical Leave Act (FMLA) in light of the U.S. Supreme Court decision in *United States v. Windsor*. The definition is aimed at preventing FMLA compliance difficulties that may result from state-by-state differences in FMLA interpretations. The newly proposed definition should be available in March 2014.

### **Notable Cases**

*Summers v. Altarum Inst. Corp., 4<sup>th</sup> Cir., No. 13-1645 (Jan. 23, 2014)*

An employee was injured in a fall, resulting in six weeks of a no weight restriction on his left leg, as well as months without the ability to walk normally. Shortly after the injury occurred, the employee contacted his HR department and received a short-term disability benefit. The employee sent e-mails to his supervisors with an accommodation proposal to return to work part-time from home after six weeks. Instead, the employer terminated the employee after a month and a half of employment absences.

The 4<sup>th</sup> Circuit Court of Appeals had to determine whether the short-term impairment would qualify as a disability under the ADA Amendment’s Act. Looking to EEOC regulations, the Court determined that although the employee was suffering from a temporary injury, the fact that it rendered him immobile for more than seven months was severe enough to qualify as a disability under the ADA. Consequently, employers should not assume that a temporary injury will not qualify as a disability for ADAAA purposes, and should take special precautions to ensure that reasonable accommodations are considered.

*Ion v. Chevron. 5<sup>th</sup> Cir., No. 12-60682*

The Plaintiff was having performance issues at work, ultimately resulting in suspension. He subsequently began counseling due to stress; later informing his employer that he may seek disability leave. After receiving the FMLA paperwork from the employee, the organization requested that the employee go to a clinic to “certify the

FMLA.” The employee refused to sign a medical release at the clinic, and clinic employees described his behavior as “angry,” “belligerent,” and “abusive.”

Soon thereafter, management began a series of e-mails alleging the employee was “faking a nervous breakdown” to obtain FMLA benefits, and alleging that the employee had “premeditatedly planned to fake an illness.” A short time later, the employee was terminated.

A Fifth Circuit District Court granted summary judgment on the plaintiff’s FMLA retaliation claim. However, the Fifth Circuit Court of Appeals reversed, determining that the employee’s exercise of FMLA rights was the motivating factor in the termination. The Court was critical of the employer for taking action against the employee without even the “most cursory” of investigations. Once again, this case demonstrates the need for employers to conduct a thorough and complete investigation before taking action, and basing such actions upon credible and reliable evidence.

The case can be found at: <http://www.ca5.uscourts.gov/opinions.pub/12/12-60682-CV0.wpd.pdf>

### *Department of Labor – Big Lots*

Beware of FMLA eligibility and notice requirements. A Big Lots Stores, Inc. in Florida was ordered to pay an employee \$8,787 after the employee was terminated for absences from work that should have been protected under the FMLA. The employee was taking time off to care for a seriously sick child. The termination sparked an investigation by the Tampa District Office of the DOL Wage and Hour Division. The agency determined that the employer failed to provide the employee with required FMLA eligibility and designation notices. As the DOL has recently indicated a more aggressive stance with respect to FMLA rights, it is important for employers to make sure that employees are advised of eligibility rights to meet legal compliance requirements.

More information can be found at:

<http://dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Southeast/20140106.xml>

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### ***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.***