

## Legislative Update

*July 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.**

### ***California Expands Definition of Family Beginning July 1st***

The California Paid Family Leave Law expands the definition of family to include grandchildren, grandparents, siblings and parents-in-law, effective July 1, 2014. Specifics of the changes were provided in the January and May legislative updates.

An explanation of the interplay between the FMLA, CA PFL and CFRA can be found at:  
<http://www.lexology.com/library/detail.aspx?g=7746aec0-f3f9-4c91-92e6-9f2591c22fd4>

**IMPACT TO YOUR PROGRAM WITH MATRIX: Matrix will update the programming in the leave and disability systems to allow for the additional family members. All operations staff will receive the updates and the information will be incorporated into training guides. If clients have a California Voluntary Plan, Matrix will manage the Paid Family Leave benefit.**

### ***Connecticut Paid Sick Leave Law***

An amendment to the Connecticut Paid Sick Leave Act of 2012 was signed into law on June 6, 2014, effective January 1, 2015. The amendment provides new rules for determining the fifty (50) employee threshold in establishing coverage under the Act. The changes will make it more difficult for employers to manipulate the workforce through payroll actions, transfers, or terminations of employees. The amendment also provides for greater flexibility of timeframes to determine the accrual of sick leaves.

More information about the legislation can be found at: <http://www.natlawreview.com/article/connecticut-employer-alert-changes-to-paid-sick-leave-requirements-effective-january>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No Impact. This is a "paid sick leave" law and requires employers to provide this benefit if they meet the criteria. See website above for specific detail.**

## ***DOL Provides Notice of Proposed Rule Change to Define Spouse for FMLA Regulations***

In June, 2014, the Department of Labor provided notice for the proposed definition of “spouse” for FMLA regulations. The DOL is providing the change as a result of the 2013 U.S. Supreme Court decision in *United States v. Windsor*. According to the Department:

“We are publishing a Notice of Proposed Rulemaking (NPRM) to amend the regulatory definition of spouse under the FMLA so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will now be applied to all families equally; giving spouses in same-sex marriages the same ability as all spouses to fully exercise their rights and responsibilities to their family.”

The revised definition of the term “spouse” will have obvious significant implications for employers nationwide for FMLA purposes.

For more information: [http://www.dol.gov/whd/fmla/nprm-spouse/fact\\_sheet.pdf](http://www.dol.gov/whd/fmla/nprm-spouse/fact_sheet.pdf)

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact at this time. If the rule is amended, Matrix will update the system and examiner training.**

## ***Reminder! Maryland Parental Leave Law to Take Effect October 1st***

Maryland employers will have to provide up to six (6) weeks of unpaid parental leave under newly signed legislation in Maryland. The legislation will take effect on October 1, 2014. The legislation may have a significant impact on small employers, as the law requires organizations with 15-49 employees to provide unpaid parental leave, impacting those employers that were previously immune from leave requirements under the FMLA.

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact at this time as parental leave under FMLA is applicable to all Matrix clients.**

## ***Minnesota Employees Will Have a Right to Jury Trial under Minnesota Human Rights Act***

Effective August 1, 2014, Minnesota employees will have a right to a jury trial for claims brought under the Minnesota Human Rights Act. Employees currently have a right to trial by judge without a jury. This change could result in more expensive litigation for employers in discrimination-related claims, as well as a greater number of claims being filed in state court, as opposed to federal court.

More information regarding the matter:

<https://www.revisor.mn.gov/bills/bill.php?f=SF2322&b=senate&y=2014&ssn=0>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to leave management.**

## ***Illinois to Expand Protection for Pregnancy and Childbirth Leave***

The Illinois Legislature has amended the Illinois Human Rights Act to afford greater employee protections for matters related to pregnancy and childbirth. Upon signature of the governor, the changes will become effective January 1, 2015. Employers of all sizes will be obligated to make any reasonable accommodation, unless able to prove an undue hardship.

More specific details regarding possible accommodations and undue hardship defenses can be found at: <http://www.lexology.com/library/detail.aspx?g=85cdb7b3-2e5c-466b-a7a9-54dfa7455664>

**IMPACT TO YOUR PROGRAM WITH MATRIX: If “leave as an accommodation” is granted by the employer, Matrix can manage/track this leave. Contact your Account Manager for information on Accommodation Services.**

## ***California Healthy Workplaces, Healthy Families Act***

The California Assembly has passed Assembly Bill (AB) 1522 (The California Healthy Workplaces, Healthy Families Act), which would provide qualified employees with one hour of paid sick time for every 30 hours worked. The legislation would limit the sick leave to 24 hours in a calendar year. It would require employers to provide leave for the diagnosis, treatment or care of the employee or a family member, as well as for situations related to domestic violence, sexual assault, or stalking. The bill would become effective July 1, 2015.

Provided the broad nature of coverage in the legislation, it could have significant implications for employers with respect to compliance and monitoring.

For more information regarding covered employers and specific provisions of the act: <http://www.legtrack.com/bill.html?bill=201320140AB1522>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact to Matrix as this is a “sick pay” provision.**

## ***Notable EEOC Disability News:***

*EEOC v. The Fort Worth Center of Rehabilitation*, at: <http://eoc.gov/eoc/newsroom/release/6-26-14.cfm>

*EEOC v. Baldwin Supply*, at: <http://eoc.gov/eoc/newsroom/release/6-24-14a.cfm>

*EEOC v. CCR Wellness Investments, LLC, dba Massage Envy*, at: <http://eoc.gov/eoc/newsroom/release/6-23-14.cfm>

## Notable Cases

### ***Inflexible Leave Policy by Employer Survives Challenge***

In *Hwang v. Kansas State University*, the Tenth Circuit Court of Appeals determined that the university's inflexible six (6) months leave policy was reasonable.

The Plaintiff was a well-performing assistant professor that requested a leave of absence for cancer treatment. The university granted a six (6) month leave of absence with pay. The Plaintiff subsequently requested additional leave, but was informed that the university had an inflexible six months leave policy, and her request was denied.

The Plaintiff alleged that her employment was effectively terminated, and filed suit in federal court alleging a violation of the Rehabilitation Act. The Rehabilitation Act prohibits disability discrimination by those receiving federal funding.

The District Court found for the employer, and the Plaintiff appealed to the Tenth Circuit Court of Appeals. In affirming the District Court's decision, the Court noted:

*"There's no question she's a capable teacher, no question she's disabled within the meaning of the Act. But there's also no question she wasn't able to perform the essential functions of her job even with a reasonable accommodation. By her own admission, she couldn't work at any point or in any manner for a period spanning more than six months. It perhaps goes without saying that an employee who isn't capable of working for so long isn't an employee capable of performing a job's essential functions — and that requiring an employer to keep a job open for so long doesn't qualify as a reasonable accommodation. After all, reasonable accommodations — typically things like adding ramps or allowing more flexible working hours — are all about enabling employees to work, not to not work."*

Rehabilitation Act claims are similar in nature to ADA-type claims. Employers would be wise to review this case to glean the policies and factors in the Court's determination. The Court noted the length of leave, as well as the inability of the employee to perform any of the essential functions. With respect to the essential functions, the Court provided:

*"Still, it's difficult to conceive how an employee's absence for six months — an absence in which she could not work from home, part-time, or in any way in any place — could be consistent with discharging the essential functions of most any job in the national economy today. Even if it were, it is difficult to conceive when requiring so much latitude from an employer might qualify as a reasonable accommodation. Ms. Hwang's is a terrible problem, one in no way of her own making, but it's a problem other forms of social security aim to address."*

The case can be found at: <https://www.ca10.uscourts.gov/opinions/13/13-3070.pdf>

## **Gibbs v. Azco Integrated Construction, Iowa Workers' Compensation Commissioner File No. 5018696 (June 4, 2014).**

After an employee suffered long-term problems with his left wrist, his treating physician recommended treatment at the Mayo Clinic. The Deputy Workers' Compensation Commissioner indicated that Iowa law generally permits employers to choose for the care of injured workers; however, he further determined that the "defendants have abandoned the claimant's care," in this case. Consequently, the Deputy Commissioner held, "Claimant may choose the providers for his care for his left arm injury, and defendants shall authorize and pay for that care including care at the Mayo Clinic for claimant's left elbow."

For more information: <http://www.shrm.org/legalissues/stateandlocalresources/pages/iowa-workers-comp-board-authorizes-treatment-at-mayo-clinic.aspx>

### **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.***

***This document was prepared by Human Analytics, LLC. The information has been provided for informational or educational purposes only and is not intended and should not be construed as legal advice. There is no intent to create an attorney-client relationship in the creation or use of this document.***

***Human Analytics, LLC, provides human resource consulting services in the areas of disability and leave law, sexual harassment, workplace diversity, and change management. In addition, the organization provides alternative dispute resolution services, including mediation and arbitration.***