RELIANCE STANDARD
LIFE INSURANCE COMPANY

MATRIX
ABSENCE MANAGEMENT

Legislative Update

April 2014

Family and Medical Leave Enhancement Act Proposed in House

The Family and Medical Leave Enhancement Act was recently introduced in the House of Representatives as H.R. 3999. The Bill would significantly alter the FMLA. Under the provisions contained in the proposed amendments, employees would be permitted to take additional leave time to participate and attend their children or grandchildren's educational and extracurricular activities. The Bill would also clarify that leave may be taken for routine family medical needs, and to assist elderly relatives.

Section 101(2)(B)(ii) of the FMLA would also be amended to state "fewer than 25" rather than "less than 50." This will reduce the number of exempt employees under the current FMLA, as the current law exempts worksites with less than 50 employees in a 75 mile radius. Consequently, a significantly greater number of employees may be entitled to FMLA protection under the proposed legislation.
More information available at: http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3999:
IMPACT TO YOUR PROGRAM WITH MATRIX:
In the event that this proposed legislation becomes law, the final provisions will be reviewed and modifications to systems and process will be made as needed.

Philadelphia Fair Practices Ordinance Amended

The City of Philadelphia has recently amended the Fair Practices Ordinance, prohibiting pregnancy discrimination and affording greater rights for workplace accommodations for employees with needs related to pregnancy, childbirth, or a related medical condition.

Accommodations may include breaks, rest periods, assistance with manual labor, leave, or reassignment.

More information is available at: http://www.foxrothschild.com/newspubs/newspubsArticle.aspx?id=15032393001
IMPACT TO YOUR PROGRAM WITH MATRIX:
There is no impact to the programs managed by Matrix.

New York City Expansion of Earned Sick Leave Act Now in Effect

As of April 1, 2014, the New York City Expansion of Earned Sick Leave Act is in effect. The expanded Act authorizes a greater scope for leave purposes, significantly extends the statute of limitations for worker claims, and may expand coverage to as many as 500,000 additional employees.

More information is available at:
http://www.arentfox.com/newsroom/alerts/new-york-city-dramatically-expands-paid-sick-leave-new-law-covers-virtually-all#.Uxif2dQo7Gg
IMPACT TO YOUR PROGRAM WITH MATRIX:
There is no impact to the programs managed by Matrix as this pertains to sick leave tracking.

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.

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.

Elections – Plan ahead to be in Compliance with Time-Off to Vote Laws

Many states currently require employers to permit employees time off for purposes of voting in elections, and some prohibit disciplinary action against an employee for exercising his/her right to vote. .
More state specific information available at: *http://www.findlaw.com/voting-rights-law.html*

IMPACT TO YOUR PROGRAM WITH MATRIX:
There is no impact to the programs managed by Matrix.

Newark, NJ Ordinance to Go Into Effect Next Month

The Sick Leave for Private Employees Ordinance recently passed by the Newark Municipal Council becomes effective May 29, 2014. Similar ordinances are in effect in New York City, Portland, San Francisco, Seattle, and Washington, D.C.
More information about the ordinance can be found at: http://www.jdsupra.com/legalnews/mayor-approves-newark-paid-sick-leave-o-57890/

IMPACT TO YOUR PROGRAM WITH MATRIX:
There is no impact to the programs managed by Matrix as this pertains to sick leave tracking.

Notable Cases

Escriba v Foster Poultry Farms, Inc. 9th Cir., No. 11-17608, 12-15320 (Feb. 25, 2014)

A long-term employee went out of country for two weeks to care for her sick father. The employee specifically indicated that she did not want to use family leave, but instead requested use of her accrued vacation time. The employee did not return for several weeks, and failed to advise the company of her continued absence, nor did she ask for additional leave. The company subsequently terminated the employee for a violation of the "three-day no-show no-call rule."

The employee filed suit alleging a violation of the FMLA and California law. The employee argued that the employer was required to designate the leave as medical leave, even though she declined, as the leave was qualified under the FMLA. The 9th Circuit Court of Appeals affirmed a jury verdict in favor of the employer, determining that an employee may defer the exercising of FMLA rights, and may decline the exercise of such rights.

In this case, it appears that the employee expressly refused to exercise FMLA rights, then after a significant period of job abandonment, requested that the employer retroactively provide leave benefits.

The case can be found at:
http://scholar.google.com/scholar_case?case=14207874638610537789&q=Escriba+v.+Foster+Poultry+Farms+Inc.&hl=en&as_sdt=6,36&as_vis=1

Ballard v. Chicago Park District, 7th Cir. No. 13-1445 (Jan. 28, 2014)
The employee was the primary caretaker for her terminally ill mother. The employee performed daily caretaking functions, including, cooking, bathing, and the administering of medications. At one point, the mother expressed a desire to go on a Las Vegas vacation before she died. A charitable organization assisted in arranging and providing for the trip. The employee accompanied her mother to Las Vegas for six days, performing many of the same caretaking functions as at home. The employee was subsequently terminated, as the employer determined that the trip was not related to ongoing medical treatment, and therefore, not covered under the FMLA as permitted leave.

The 7th Circuit determined that the question was not one of "treatment," but one of "care." The Court noted that the FMLA did not contain geographic limitations, nor explicitly define "care." The Court determined that "care" related to the, "basic medical, hygienic or nutritional needs." The Court noted that 1st and 9th Circuit rulings require that travel related to medical treatment, but opted for a different interpretation under the FMLA.
Those operating in the 7th Circuit should be aware that travel for FMLA requests does not necessarily require medical treatment, but "care."

The case can be found at:
http://hr.cch.com/ELD/BallardChicago.pdf

Dorris v. TXD Services LP, 8th Cir., No. 12-3096 (Feb. 27, 2014)
The U.S. 8th Circuit Court of Appeals has recently determined that employers must afford an employee on military leave the same benefits as other employees on comparable long-term leaves. The case also addresses the Uniformed Services and Redeployment Rights Act (USERRA).

More information can be found at:
http://media.ca8.uscourts.gov/cgi-bin/getDocs.pl?case_num=12-3096