

## Legislative Update

*November 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.

### ***Massachusetts Voters Approve Sick Leave Act***

Massachusetts has joined California and Connecticut as voters have approved a statewide sick leave law to take effect on July 1, 2015. Employers must be sure to monitor an employee's right to leave by diligently documenting hours worked. The law provides that employers with 11 or more employees may have to provide paid sick leave for up to forty (40) hours per year. Employers with fewer than 11 employees may have to provide sick leave without pay.

The law also contains carryover provisions, but employers may restrict the use of sick leave under the Act to 40 hours per year. Employees will earn one (1) hour of sick leave for each thirty (30) hours of work completed. Hours begin to accrue on the first day of employment, but an employee does not have a vested right to take leave until after 90 days of employment. The Act also provides employer prohibitions against interference and retaliation for employees exercising their rights under the new law. Employers should be sure to carefully review the provisions of the new law, and adjust employment handbooks and workplace policies to maintain compliance.

More information and text of the law can be found at the Secretary of Commonwealth of Massachusetts at <http://www.sec.state.ma.us/ele/ele14/pip144.htm>

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact. This is a pay practice and not a State Leave Law managed by Matrix.**

### ***San Diego, California – Local Sick Leave Law on Hold***

The recently enacted San Diego Sick Leave Ordinance is stayed as local business leaders produced enough signatures to override city council's passage of the minimum wage/sick leave legislation. It appears that council may now be forced to repeal the legislation or place the measure on the ballot.

For more information: <http://www.natlawreview.com/article/update-san-diego-earned-sick-leave-and-minimum-wage-ordinance-provisions-hold-to-go->

## ***New Jersey – More Cities to Provide Sick Leave Law***

Montclair and Trenton passed sick leave measures, joining Newark, Jersey City, Passaic, East Orange, Paterson, and Irvington. For those municipalities in which the sick leave ordinances are not yet in effect, become effective between December 31, 2014 and March 4, 2015. As there are differences between the provisions of the local ordinances, organizations would be wise to review the specific compliance requirements of each jurisdiction.

For more information regarding the passage of the ordinances:

[http://www.nj.com/essex/index.ssf/2014/11/montclair\\_paid\\_sick\\_time\\_results.html](http://www.nj.com/essex/index.ssf/2014/11/montclair_paid_sick_time_results.html)

See also:

[http://www.nj.com/mercer/index.ssf/2014/11/an\\_overwhelming\\_victory\\_for\\_trentons\\_paid\\_sick\\_leave\\_ordinance\\_leaves\\_administrators\\_with\\_the\\_task\\_o.html](http://www.nj.com/mercer/index.ssf/2014/11/an_overwhelming_victory_for_trentons_paid_sick_leave_ordinance_leaves_administrators_with_the_task_o.html)

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## ***California – Oakland Passes Sick Leave law***

The Paid Sick Leave initiative passed in Oakland, California. Under the provisions, employees working for organizations with more than ten (10) employees may be eligible for up to nine (9) paid sick days per year, while smaller employers may have to provide up to five (5) sick days. Sick time will begin accruing for employees on March 2, 2015. Like other similar legislation, employees may earn one (1) hour of sick leave for each thirty (30) hours worked.

For more information: <http://www.wagehourinsights.com/state-regulation/wage-and-hour-2014-election-results-roundup-minimum-wage-paid-sick-leave-big-winners/>

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## ***Iowa – Veteran’s Day***

Don’t forget! Iowa employers must provide time off for veterans for the observance of Veteran’s Day. Employers can decide whether the time off shall be paid or not. Oregon has a similar requirement.

**IMPACT TO YOUR PROGRAM WITH MATRIX: No impact. This is not a leave of absence managed by Matrix.**

## ***Puerto Rico – Amendments to Sick Leave Law Now Effective***

Amendments to Act 180 of the Minimum Wage, Vacation and Sick Leave Law have gone into effect. The Amendments expand the jurisdiction and authority of the Puerto Rico Department of Labor and Human Resources. The Amendments significantly impact issues related to vacation leave, and a stated purpose of the Act is to “protect the right to vacation leave for workers in the Commonwealth of Puerto Rico.” In the event that actual damages cannot be determined, the Amendments provide for penalties of \$500 - \$3,000 per violation.

For more information: <http://www.littler.com/puerto-rico-workplace-counsel/amendment-act-180-imposes-civil-penalties-employers-violations>

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

*EEOC v. Doumak, Inc. at: <http://eoc.gov/eoc/newsroom/release/11-4-14a.cfm>*

*EEOC v. Randall Ford, Inc. at: <http://eoc.gov/eoc/newsroom/release/11-4-14.cfm>*

*EEOC v. Minnesota Living Assistance, Inc. at: <http://eoc.gov/eoc/newsroom/release/10-30-14.cfm>*

### *Notable Case*

*Weaving v. City of Hillsboro, 9<sup>th</sup> Cir. 12-35726 (Aug. 15, 2014)*

The Ninth Circuit Appellate Court overruled a jury verdict in the amount of \$777,000 against the City of Hillsboro, Oregon. The plaintiff was a police sergeant with a diagnosed condition of ADHD. After an investigation, the City determined that the plaintiff “created and fostered a hostile environment for his subordinates and peers; in particular he has been described in terms such as, tyrannical, unapproachable, non-communicative, belittling, demeaning, threatening, intimidating, arrogant and vindictive.” The City subsequently terminated his employment.

The plaintiff brought suit, alleging an ADA violation. Specifically, the plaintiff alleged that the employer failed to make a reasonable accommodation for his disability, described as major life activities, including working and interacting with others. A jury found for the plaintiff.

In reversing the lower court, the appellate court determined that the plaintiff did not meet the requirement of a substantially limiting major life activity. The court reasoned that the plaintiff was able to work, and most importantly created a distinction between the inability to work with others, versus an inability

to get along with others. According to the court, an inability to work with others would be characterized by one that is homebound, barely functional or unable to communicate. However, the court provided that those that have a difficult time getting along with others does not meet the qualifications of a substantial limitation. The court provided, “A cantankerous person who has mere trouble getting along with co-workers is not disabled under the ADA.”

The case can be found at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/08/15/12-35726.pdf>

### *Sanchez v Swissport*

An employee who was disabled as a result of her pregnancy and had exhausted all leave under California Pregnancy Disability Leave Law (“PDLL”) and the California Family Rights Act (“CFRA”) was entitled to additional leave as a reasonable accommodation under the California Fair Employment and Housing Act (“FEHA”), the California Court of Appeal has ruled in a case of first impression. *Sanchez v. Swissport, Inc.*, No. B237761 (Cal. Ct. App. Feb. 21, 2013).

**IMPACT TO YOUR PROGRAM WITH MATRIX:** As part of Matrix standard practice FMLA will run concurrent with CA PDLL, immediately followed by CFRA.

Correspondence is being updated providing information to the employee if they have not delivered at the time CA PDLL exhausts (17.3 weeks), they may consider requesting an accommodation through their Human Resources department.

If leave as an accommodation is granted under FEHA, Matrix will not apply CFRA and will close the claim. If the employee decides to request time off under CFRA, they should contact Matrix 30 days in advance and their eligibility for CFRA will be verified prior to granting the leave.

Exception: Matrix ADA Advantage program will manage this accommodation process for those clients contracting for this service.

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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.***

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