

Election Day is Coming – What are Your Obligations as an Employer?

By Richard I. Greenberg and Daniel J. Jacobs

October 25, 2016

With Election Day drawing near, and large voter turnout expected, employers should ensure they are aware of state law requirements related to providing employees with time off. While not all states impose requirements on employers, some impose time off obligations with the possibility of criminal or civil penalties for non-compliance.

Applicable laws vary by state. Some provide for paid time while others do not mandate that such time off be paid. Laws also vary as to the amount of time that must be provided and whether an employer can dictate which hours are taken off, such as at the start or end of the workday. Further, some jurisdictions require postings to advise employees of voting leave rights. Additionally, some jurisdictions also obligate employers to provide time off to employees who serve as election officials or to serve in an elected office.

Accordingly, employers should immediately review existing policies and practices to ensure compliance with applicable laws and be prepared to address requests for time off prior to Election Day.

The following is a sample of state requirements regarding voting time off:

Arizona – Arizona Revised Statute § 16-402 provides that an employee has the right to be absent from work if he or she has fewer than 3 consecutive hours in which to vote between the opening of the polls and the beginning of his or her work shift or between the end of his or her regular work shift and the closing of the polls. An employee may be absent for a length of time at the beginning or end of his or her work shift that, when added to the time difference between work-shift hours and the opening/closing of the polls, totals 3 consecutive hours.

- **Notice:** The employee must apply for leave prior to Election Day.
- **Hours:** The employer may specify the hours.
- **Paid:** Leave is paid.

California – Pursuant to California Election Code § 14000, employees are entitled to an amount of time off to vote that, when added to the voting time otherwise available to him or her outside of working hours, will enable him or her to vote. Employee with sufficient non-working time to vote are not entitled to additional time off to vote.

- **Notice:** Two working days' advance notice prior to the election is required if, on the third working day prior to the election, the employee knows or has reason to believe he or she will need time off in order to vote.
- **Hours:** Time may be taken only at the beginning or end of the work shift, whichever allows the greatest amount of free time for voting and least time off from work, unless otherwise mutually agreed.
- **Paid:** No more than 2 hours of the time taken off for voting shall be without loss of pay.

Colorado – Colorado Revised Statute §1-7-102 provides that eligible voters are entitled to be absent from work for up to 2 hours for the purpose of voting on Election Day unless the employee has 3 or more non-working hours to vote while the polls are open.

- **Hours:** The employer may specify the hours of absence, but the hours must be at the beginning or end of the work shift, if the employee so requests.
- **Paid:** No more than 2 hours.

Hawaii – Pursuant to Hawaii Revised Statutes § 11-95, employees who do not have 2 consecutive non-working hours to vote while the polls are open are entitled to take time off up to 2 hours (excluding any lunch or rest periods) to vote, so that the time taken when added to the non-working time totals 2 consecutive hours when the polls are open. Employees cannot be required to reschedule their normal work hours to avoid the needed time off.

- **Paid:** Employees must be paid for time taken during working hours. If any employee fails to vote after taking time off for that purpose, the employer, upon verification of that fact, may make appropriate

Meet the Authors



Richard I. Greenberg

Principal
New York Metro
New York City 212-545-4080
Email



Daniel J. Jacobs

Principal
New York Metro
New York City 212-545-4049
Email

Practices

Disability, Leave and Health
Management
Wage and Hour

deductions from the salary or wages of the employee for the period during which the employee is entitled to be absent from employment.

- *Proof:* Presentation of a voter's receipt to the employer shall constitute proof of voting by the employee.

Maryland – Maryland Election Law Code §10-315 states that every employer in the state must allow employees who claim to be registered voters to be absent from work for up to 2 hours on Election Day to vote if the employee does not have 2 consecutive non-working hours to vote while the polls are open.

- *Paid:* Employees must be paid for the up to 2 hours of absence.
- *Proof:* Employees must provide proof of voting or attempt to vote on a form prescribed by the State Board.

New York – New York Election Law § 3-110 states that an employee is entitled to a sufficient amount of leave time that, when added to his or her available time outside of working hours, will enable him or her to vote. Four hours is considered sufficient time. An employee is excluded from leave if he or she has 4 consecutive hours in which to vote, either between the opening of the polls and the beginning of his or her work shift or the end of his or her work shift and the close of the polls.

- *Notice:* The employee must provide notice of leave at least 2, but not more than 10, days prior to the election.
- *Hours:* The employer may specify the hours. Leave must be given at the beginning or end of the work shift, as the employer may designate, unless otherwise agreed.
- *Paid:* Not more than 2 hours may be without loss of pay.

Of course, in addition to state law, local laws should be reviewed. Jackson Lewis is available to answer inquiries regarding the law in your locality and to ensure you are in compliance.

©2016 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.