

Election Day is Fast Approaching – Have You Prepared?

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As Election Day approaches and despite the anticipated uptick in absentee ballots, employers should ensure they are in compliance with state law requirements related to employee voting rights. While not all states impose requirements on employers, some impose time off obligations and notice requirements with the possibility of criminal or civil penalties for non-compliance.

Applicable voting laws vary by state. In certain states, employers must provide paid time off to vote, including for early voting or absentee ballot submission, while other state laws allow such time to be unpaid. Relevant 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 employee's workday. Further, some jurisdictions require postings to advise employees of their 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.

Employers should review existing policies and practices immediately to ensure compliance with applicable laws and be prepared to address employee requests for time off prior to Election Day on November 3, 2020. Employers also should consider the impact of remote employees, which may allow greater flexibility in meeting relevant obligations, as well as how to address any technical posting requirements. Further, the anticipated increase in absentee ballot requests may mitigate some of the practical impact on employers as it relates to time off requests.

The following is a sampling of state law requirements regarding employee voting time off. Of particular note is the New York requirement that became effective this year.

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 the employee outside of working hours, will enable the employee to vote. An employee with sufficient non-working time to vote is 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 they 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 may be without loss of pay.
- **Posting Requirement:** Employers must post a notice of voting time requirements at least 10 days before an election. Employers can satisfy this requirement by posting a copy of the "Time Off to Vote" notice.

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 at least 3 non-working hours to vote while the polls are open.

- **Notice:** The employee must apply for leave prior to Election Day.
- **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.

Georgia – Georgia Code § 21-2-404 provides that eligible voters who do not have 2 consecutive non-working hours to vote while the polls are open are entitled to up to 2 hours off to vote.

- **Notice:** The employee must provide reasonable notice to the employer.

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- *Hours:* The employer may specify the hours of absence.
- *Paid:* No requirement to provide paid time off.

Illinois – Under Illinois Statute 10 ILCS 5/17-15, an eligible voter is allowed time off for a period of up to 2 hours between the time of opening and closing of the polls.

- *Notice:* Employees must provide notice prior to Election Day.
- *Hours:* Employers may specify the hours during which the employee may be absent, except that the employer must permit a 2-hour absence during working hours if the employee's working hours begin less than 2 hours after opening of the polls and end less than 2 hours before closing of the polls.
- *Paid:* Employers cannot reduce employees' pay for voting time leave.

New York – New York Election Law § 3-110 states that a registered voter who does not have 4 consecutive non-working hours to vote while the polls are open may take off so much working time as will enable the person to vote at any election without loss of pay for up to 2 hours.

- *Notice:* The employee must provide notice of leave at least 2 working 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.
- *Posting Requirement:* Employers must also conspicuously post a notice for employees about the law not less than 10 working days before every election. The notice must be kept posted until the close of the polls on Election Day.

Oklahoma – Pursuant to 26 Okl. St. § 7-101, a registered voter who does not have 3 consecutive non-working hours to vote is entitled to 2 hours of time off to vote on the date of the election or on a day on which in-person absentee voting is allowed by law, except that if the employee is at such a distance from the voting place that 2 hours would not provide sufficient time to cast a ballot, they must be provided with additional time.

- *Notice:* Employees must notify the employer orally or in writing of their intention to vote at least 3 days before the day of the election or the day of in-person absentee voting.
- *Hours:* Employers may select the days and hours that such employees are to be allowed to attend such elections and may notify each of the employees which days and hours they have in which to vote.
- *Paid:* Upon proof of voting, an employee may not be subject to any loss of compensation.

Tennessee – Under Tennessee Code § 2-1-106, an eligible voter must be allowed reasonable time to vote, up to 3 hours, unless polls in the county where the employee is a resident are open for 3 hours before work or open for 3 hours after work.

- *Notice:* Employees must apply for voting leave before noon the day before the election.
- *Hours:* Employers may specify the hours during which the employee may be absent.
- *Paid:* Employers cannot reduce pay because employees take voting time leave.

Of course, in addition to state law, local laws should be reviewed for compliance with voting leave rights. Jackson Lewis attorneys are available to answer inquiries regarding the law in your locality and to help ensure you are in compliance.

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