



Employment Law Counseling & Training

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Published by Proskauer Rose, the "Employment Law Counseling & Training Tip of the Month" provides best practice tips to assist employers in avoiding workplace problems and improving employee satisfaction.

As employees continue to hear news reports of long lines at early voting, employers are likely to receive requests for time-off to vote on Election Day. Employers are often surprised to learn that there is no federal law requiring time-off to vote. However, a majority of states have such laws and many obligate employers to provide employees time-off to vote - sometimes even paid time-off - and in certain situations may even impose civil and/or criminal penalties for non-compliance. This month's Proskauer Counseling Tip, "Ballot Breaks: Providing Time-Off to Vote", summarizes the law in many of the states where our clients have facilities. After all, a counseling "tip" is of real value when it provides practical guidance before the employee request is made so that Human Resources professionals, and their counselors, can work cooperatively with managers and supervisors in handling these situations when they arise—and they almost always do on Election Day.

Law & the Workplace™

Tip of the Month

Tip: Across the country states are reporting record numbers of new voter registrations. Voter turnout in this year's election may reach an all-time high. So what does this mean for your business and company on election day? While federal law protects an individual's right to vote, it is state law that governs whether employers have to accommodate employees with time-off to vote on election day. In many states, employers are required, by law, to provide time-off for employees to vote, subject to certain conditions. Your employee manual may also address the issue, so you should make sure that your managers and supervisors are familiar with the company policy prior to election day, this November 4th. Even if this subject is not addressed in your employee manual, knowing, in advance, the employer's legal obligations, if any, to provide voting time-off, and understanding employees' rights is important, not only to ensure harmony in the workplace and proper staffing on election day, but also to avoid penalties for non-compliance which, depending on the jurisdiction, can range from fines to jail time.

Ballot Breaks: Providing Time-Off to Vote

Following is a sample of some State requirements:

California

California employers must provide employees with time-off to vote, if needed. California polls are open from 7:00 A.M. until 8:00 P.M. If employees don't have sufficient time to vote outside of working hours, they may take time-off from work, as necessary, to enable them to vote. However, only the first 2 hours of voting leave will be designated paid time-off. To minimize any disruption to the workday, it is recommended that the time-off be afforded to the employee either at the beginning or the end of the employee's regular working shift.

Note, as well, 10 days before election day, California employers are required to post notices of employees' right to time-off to vote. Importantly, employees who believe they will not have sufficient time to vote outside of working hours are required to give their employer at

least 2 working days' notice of their need to take that time-off from work to vote. As always, exercising good common sense can avoid election day staffing problems.

Connecticut

Connecticut does not require employers to provide employees with time-off to vote. However, state law prohibits employers from attempting to influence the votes of employees through the use of promises or threats. Hence, in a given circumstance, it may be prudent to provide a non-exempt employee with a modest amount of unpaid time off so that s/he has adequate time to vote while the polls are open in order to avoid any claim of impropriety. It is also unlawful to discharge an employee because of the way the employee voted.

D.C. Metro Area

In Maryland, employees are entitled to a maximum of 2 hours paid time-off to vote so long as the employee does not have 2 continuous hours to vote outside of his/her work shift during which the polls are open. Maryland polls are open from 7:00 A.M. until 8:00 P.M. Employers may require proof that the employee voted, or attempted to vote, on a form provided by the State Board of Elections.

Interestingly, neither Washington, D.C., nor Virginia have laws requiring employers to provide employees with time-off to vote. Note, however, that in Virginia, employees are eligible to vote by absentee ballot if 11 or more of the 13 hours in which polls are open are spent commuting and working. Virginia polls are open from 6:00 A.M. until 7:00 P.M. In addition, employees who notify their employers, in advance, may take unpaid time-off to serve as election officers on election day.

Florida

Florida does not require employers to provide employees with time-off to vote. However, employers are prohibited from firing or threatening to fire any employee because the employee exercised his or her right to vote. Similarly, employers may not fire or threaten to fire any employee because the employee failed to vote in an election.

Illinois

Employees in Illinois are entitled to 2 hours off from work to vote on election day so long as the employee's shift begins less than 2 hours after the opening of the polls or ends less than 2 hours before the closing of the polls. Illinois polls are open from 6:00 A.M. until 7:00 P.M. If an employee's working hours begin before 8:00 A.M. or end after 5:00 P.M., the employee may take time-off to vote. Employees must give employers notice prior to election day of their intention to take time-off to vote, and an employer can specify when the employee may leave work to vote. Illinois law is silent as to whether voting leave is paid.

Louisiana

Louisiana does not require employers to provide time-off to vote on election day. However, employers with 20 or more regular employees may not make or enforce any rule or policy that directly or indirectly controls the political activities or affiliations of their employees. Neither may an employer fire an employee for exercising his or her right to vote.

Massachusetts

In Massachusetts, legally mandated time-off to vote is limited in its availability. Only employees in manufacturing, mechanical or mercantile establishments are eligible for time-off to vote, which leave is unpaid for non-exempt employees. In addition, such leave is available only if the employee doesn't have enough time to vote while the polls are open outside of working hours. The employee may take the time-off during the first 2 hours after the polls open in the employee's voting precinct. Polls are open from 7:00 A.M. to 8:00 P.M.

New Jersey

New Jersey has no law requiring that employers provide employees time-off to vote. However, it is unlawful to influence, intimidate or otherwise interfere with an employee's right to vote. Moreover, an employer may not, by means of any "duress" or "constraint" impede, hinder, or prevent the free exercise of the franchise by any voter. Accordingly, if the employee's working hours on election day are such that s/he may not have adequate time to vote without taking time-off from work, consideration should be given to providing the non-exempt employee with unpaid time-off to vote (exempt employees, in this circumstance, would be paid so as not to violate the Fair Labor Standards Act's Salary basis test).

New York

In New York, employees may take up to two hours of voting leave without loss of pay at the beginning or end of the workday, provided the employee does not have sufficient time outside of working hours in which to vote. "Sufficient time" is a flexible standard, but four hours before or after the work day is considered sufficient time to vote. Polls are open from 6:00 A.M. until 9:00 P.M.

While often forgotten, New York employers are required to post notices of employees' right to time-off to vote at least 10 working days before the election. In addition, an employee must give the employer notice of the need for voting leave at least 2 days prior to the election. Again, exercising good common sense can avoid difficulties.

What Employers Need to Consider

Whether voting leave is addressed in your employee handbook or by state law, Human Resources professionals are best advised to address possible election day staffing issues before they arise. If your business has a voting leave policy in place, or if you are located in a state that requires time-off for voting, remind managers and supervisors in advance of the employer's legal obligations. Similarly, it is a good idea to remind employees that election

day is a regular work day and if any anticipate having attendance issues to let you know in advance so that these can be resolved with the least inconvenience to production schedules and co-workers while respecting an employee's right to vote.

If you have any questions regarding employees taking time-off to vote, please feel free to contact any of the members of Proskauer's Employment Law Counseling and Training Practice Group, who are listed below.

Employment Law Counseling and Training Practice Group

The Proskauer Rose Employment Law Counseling and Training Practice Group is a multidisciplinary practice group throughout the national and international offices of the firm which advises and counsels clients in all facets of the employment relationship including compliance with federal, state and local labor and employment laws; review and audit of employment practices, including wage-hour and independent contractor audits; advice on regulations; best practices to avoid workplace problems and improve employee satisfaction; management training; and litigation support to resolve existing disputes

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

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