Election Day is Coming – A Reminder of Employer Obligations

By Richard I. Greenberg & Daniel J. Jacobs

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Meet the Authors

Richard I. Greenberg

(Rich)
Principal
(212) 545-4080
Richard.Greenberg@jacksonlewis.com

Daniel J. Jacobs

(He/Him)
Principal
(212) 545-4049
Daniel.Jacobs@jacksonlewis.com

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With midterm elections upon us, employers should ensure they are aware of and 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.

Employer obligations 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, whether sufficient time to vote outside of work hours obviates any employer obligations 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.

As a best practice, employers should review existing policies and practices to ensure compliance with applicable laws and be prepared to address employee requests for time off prior to Election Day. 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. And, of course, employers must consider employee morale, as in some organizations there is an expectation that the employer will make voting easy for employees and ensure the company complies with any existing policies.

The following is a sampling of state law requirements regarding employee voting time off.

Arizona – Arizona Revised Statute § 16-402 provides that eligible voters who do not have 3 consecutive hours between the opening of polls and the beginning of their regular work shift or between the end of their work shift and the closing of polls must be allowed to take enough time at the beginning or end of their shift that will allow for a total of 3 consecutive non-work hours to vote while polls are open.

- *Notice:* The employee must make a request prior to voting day.
- *Hours:* The employer may specify the hours of absence.
- *Paid:* Employers cannot reduce employees' pay for voting time leave.

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.

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.

Kentucky – Pursuant to Kentucky Revised Statute § 118.035, eligible voters are allowed reasonable time to vote, but not less than 4 hours while polls are open. Employees are also allowed up to 4 hours' absence on the day of appearing before the county clerk, during business hours, to request an application or execute an absentee ballot. Employer may specify hours during which an employee may absent themselves.

- *Notice:* The employee must apply for leave prior to voting days.
- *Hours:* The employer may specify the hours of absence.
- *Paid:* No requirement to provide paid time off.

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.

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.

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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 compliance.

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