

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

By Richard I. Greenberg, Daniel J. Jacobs & John A. Snyder

October 25, 2019

## 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



With Election Day fast approaching, 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. Some state laws require paid time off to vote, while other state laws do not mandate 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 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 immediately 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 on November 5th.

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.

**Arizona** – Arizona Revised Statute § 16-402 provides that an employee has the right to be absent from work if they have fewer than 3 consecutive hours in which to vote between the opening of the polls and the beginning of their work shift, or between the end of their 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 the employee's 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 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

## John A. Snyder

(He/Him)

Principal

(212) 545-4054

John.Snyder@jacksonlewis.com

## Related Services

Disability, Leave and Health

Management

Hospitality

Technology

Wage and Hour

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 also 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 available here: <https://www.sos.ca.gov/elections/time-vote-notices/>

***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. An employer 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.

- ***Notice:*** Employees must provide notice prior to Election Day.
- ***Paid:*** Employers cannot reduce employees’ pay for voting time leave.

***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 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 a registered voter may, without loss of pay for up to 3 hours, take off so much working time as will enable the person to vote at any election.

- ***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 3 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. Employers that have yet to post such a notice may find it at: <http://www.elections.ny.gov/nysboe/elections/attentionemployees.pdf>

*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. An employer may specify the hours during which the employee may be absent.

- *Notice:* Employees must apply for voting leave before noon the day before the election.
- *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.

©2019 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 1000+ 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>.