

# Insight

## IN-DEPTH DISCUSSION

OCTOBER 11, 2016

## When Can An Employee Take Leave To Vote?

BY ILYSE SCHUMAN AND WILLIAM E. TRACHMAN

This fall, Americans have more than falling leaves and candy corn on their minds. While Election Day is November 8, 2016, many states have already begun the absentee and early voting process. And with the current contentious election cycle, voter turnout is likely to be high once again.

As November 8 approaches, employees may request that their normal work hours be altered or reduced so that they can more easily get to the polls during the regular workday.<sup>1</sup> To help prepare employers for these requests, we provide the following basics on voting leave laws across the country.

### State Law Governs

It is important to remember that there is no federal law granting employees leave time to vote or to participate in an election as a judge or precinct official. As a result, state or local laws govern rights employees have to ask that they be given leave from work to go to the polls. The majority of states give employees the right to take time off from work to vote or to serve as an election worker. Many states also require that an employer offer paid leave for the time needed to vote. Moreover, some states require that an employer allow an employee to take the entire day off if the employee intends to volunteer to help administer the election.

### Most States Mandate Leave—Often With Pay—for Employees to Cast Their Ballots

As stated above, the majority of states require employers to grant at least a few hours off during the workday for employees to vote. These states include:

- Alabama
- Alaska

---

<sup>1</sup> As discussed in a prior article, employers may also face challenges addressing political activity in the workplace. Ilyse Schuman and William E. Trachman, [Election 2016: Political Speech and Activity in the Workplace](#), Littler Insight (Sept. 29, 2016).

- Arizona
- Arkansas
- California
- Colorado
- Georgia
- Hawaii
- Illinois
- Iowa
- Kansas
- Kentucky
- Maryland
- Massachusetts
- Minnesota
- Missouri
- Nebraska
- Nevada
- New Mexico
- New York
- Oklahoma
- South Dakota
- Tennessee
- Texas
- Utah
- West Virginia
- Wisconsin; and
- Wyoming

Typically, laws in these states require employers to provide employees with between one and four consecutive hours to go to the polls. This leave is commonly conditioned on the employee's inability to vote outside of working hours, based on the polling hours and his or her schedule. For example, employers in Arizona, Iowa, Missouri, and Wyoming are obligated to provide leave only if the employee does not have three consecutive nonworking hours while the polls are open.<sup>2</sup> Arizona, for instance, opens its polls at 6 a.m. and closes them at 7 p.m. So an employee whose schedule either starts at 9 a.m. (or later), or ends at 4 p.m. (or earlier), is not entitled to leave from work to vote. Similarly, Iowa polls are open until 9 p.m. on Election Day, so any employee who ends work at 6 p.m. or earlier is not entitled to voting leave.

In some states, employees who will need time off to vote must request it before Election Day. Indeed, more than half of the states with voting leave laws require advance notice as a prerequisite for the employee

<sup>2</sup> In Massachusetts, the law appears to apply only to employees working in a manufacturing, mechanical, or mercantile establishment. Mass. Gen. Laws ch. 149, § 178.

to secure voting leave. The laws in Alabama and Georgia, for instance, instruct employees to provide “reasonable notice” to their employers. In California, the notice requirement flows both ways: employers are obligated to post a notice at least 10 days before the election, informing employees of their right to take off to vote if necessary, and employees who know they will need leave must give their employers two working days’ notice in order to be eligible for leave.<sup>3</sup>

When a leave requirement is triggered, employers can generally specify the time that the employees are permitted to be absent (e.g., the first or last part of the shift). In addition, more than 20 states—including Alaska, Maryland, Utah, and West Virginia—require employers to pay the employee for the hours set aside for voting leave. These laws prohibit the employer from deducting from employee pay, or in any other way penalizing the employee for exercising the right to take voting leave.

### **Some States do not Require Leave for Employees to Vote**

On the other hand, like the federal government, many states have no legislation mandating voter leave, including:

- Connecticut
- Delaware
- Florida
- Idaho
- Indiana
- Louisiana
- Maine
- Michigan
- Mississippi
- Montana
- New Hampshire
- New Jersey
- North Carolina
- North Dakota<sup>4</sup>
- Ohio<sup>5</sup>
- Oregon<sup>6</sup>
- Pennsylvania<sup>7</sup>
- Rhode Island
- South Carolina<sup>8</sup>

---

<sup>3</sup> Cal. Elec. Code §§ 14000–14001.

<sup>4</sup> North Dakota does not require leave to vote, but encourages employers to allow voters time if their work schedules conflict with the polling hours.

<sup>5</sup> Ohio does not require employers to grant voter leave, but it prohibits employers from discharging employees for exercising their right to vote.

<sup>6</sup> Oregon and Washington require voters to vote by mail, rather than come to the polls, on Election Day. There is no such thing as “polling hours” in these states.

<sup>7</sup> In Pennsylvania, employers are not obligated to grant leave to vote, but they cannot prevent an employee from voting.

<sup>8</sup> South Carolina does not require employers to grant voter leave, but, like Ohio, it prohibits employers from discharging employees for exercising their right to vote.

- Vermont
- Virginia
- Washington; and
- Washington, D.C.

Employers in these jurisdictions should review their handbooks and policies to determine if company policy provides for voting leave or other similar, applicable leave as a courtesy to employees. Obviously, such policies are not prohibited merely because they are not required by state law, and employers should follow stated policies absent adequate business justification for alternative conduct.

In addition, employers should be cognizant of the polling hours in their state, as well as the availability of early voting and voting by mail. Depending on the local circumstances and the employers' hours of operation, an employer may allow some flexibility for workers who seek time off to vote. On the other hand, employers that cannot, or simply prefer not to, accommodate individual voter requests may encourage employees to vote early or to vote by mail, where and when available.<sup>9</sup>

Of course, employers that voluntarily offer time off to vote as an accommodation to their workers should do so regardless of any employee's particular role in the organization, their political party or beliefs, or any protected category.

### **Some States Mandate Leave for Employees to Serve as Election Workers**

Many employees plan not only to vote on Election Day, but also to volunteer as election judges, precinct officials, and the like. Several states, such as Delaware, Ohio, Virginia, and Wisconsin, require employers to give employees time off (meaning potentially an entire day) to perform this public service with certain limitations. Election workers are typically required to give their employers advance notice of their absence. Moreover, employers generally are not required to pay employees for the day off of work for these activities, though employers cannot discipline or penalize those employees for missing work on Election Day because of their service as election workers.

In sum, employers should familiarize themselves with the voting leave laws in any state where they have employees. Employers should also consider researching early voting options and the polling hours in the states where they have employees. Managers can begin considering how to handle and/or schedule employee requests for time off, particularly in those states with paid voting leave. Employers with questions or concerns about voting leave should contact counsel familiar with state laws governing these issues.

---

<sup>9</sup> Indeed, states like California and Colorado encourage voting by mail. There is no longer any need to request an "absentee" in these places, and Colorado simply sends every registered voter in the state a ballot to fill out and return by mail.