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## Cast Your Vote for Compliance: Issues to Consider Regarding Voting Leave Requirements

By Susan Woodhouse and Sebastian Chilco

Election Day, Tuesday, November 6, 2012, is less than one month away. Aside from the obvious question – Who gets my vote? – employers may be asking themselves a host of voting-related questions:

- Do employees get time off to vote or serve as election workers?
- How much time off must be provided?
- Must employees be paid for voting or election service time?
- Must employees provide advance notice to take time off?
- Are employers required to post notices regarding Election Day?

Depending on the jurisdiction in which the company operates, the answers will vary. Time off to vote is dictated on a state-by-state basis. So employers must be prepared to answer these questions in every state in which they operate and remember that the laws in the majority of states give employees the right to take time off to vote, sometimes with pay, subject to the individual's hours of work and the time when the polls are open.

Concerning eligibility, the simplest answer is that employees *may* be eligible for time off on Election Day if they will vote or serve as election workers.

How much voting leave employees may be entitled to varies by state. Some mandate a specific amount of time be provided to employees (*e.g.*, 2 hours), while others are more vague and require that employees be provided "reasonable" time off. Some states have no time off requirements. Additionally, concerning employees serving as election workers, there may be restrictions on when employees can be scheduled to work before or after their service.

Employers should familiarize themselves with poll opening and closing times. Knowing this information will assist them to manage time off requests from employees, especially because the amount of voting time available to employees before and after their shifts could impact eligibility for time off. Some jurisdictions permit employers to combine available pre- or post-shift time (if the polls are open) with time off provided from work to meet their obligations. Polling times vary. For example:

- California: Polls are open from 7:00 a.m. to 8:00 p.m.
- Texas: Polls are open from 7:00 a.m. to 7:00 p.m.
- Illinois: Polls are open from 6:00 a.m. to 7:00 p.m.
- New York: Polls are open from 6:00 a.m. to 9:00 p.m.

Whether time off is paid also varies. In some jurisdictions, whether time off is paid depends on if the employee in fact votes. Additionally, pay received by employees for their election worker service may impact an employer's pay obligations.

Employee notice requirements also differ from state to state. Some states require that employees provide notice by a certain date before Election Day; some require "reasonable notice;" and others have no express notice requirement.

Some jurisdictions require employers to post information relating to time off to vote. Moreover, these notices must be posted within a specific timeframe before Election Day.

Regardless of where employers operate, they should **not** discipline employees for exercising their right to vote or for serving as election workers. Many states prohibit firing or disciplining employees because they took time off to vote or to serve as an election worker.

Because some requirements mandate action within a specific timeframe prior to Election Day, employers should contact their Littler attorney to more fully understand their compliance obligations.

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