

PUBLICATION

Election Day Is Coming; Employers Take Heed of State Election Leave Laws

October 28, 2008

With election day just a week away, it is a good time for employers to refresh their memories about applicable election leave laws. There is no federal statute that mandates leave for elections, but many states have laws that address the issue. Below you will find a summary of several state laws in this regard:

Alabama

In Alabama, an employer must give an employee up to one hour off from work to vote, subject to one exception. Alabama Code § 17-1-5 (1975) provides the following: After an employee has given reasonable notice to his or her employer, the employee is permitted to take the necessary time off from his or her employment to vote in any municipal, county, state or federal primary or election. The time off shall not exceed one hour. To be given time off, the employee must be qualified and registered to vote on the day in which the primary or election is held. An employer is not required to allow the employee to have time off to vote if the work hours of the employee begin at least two hours after the opening of the polls or end at least one hour prior to the closing of the polls. The employer may also specify the hours during which the employee may be permitted to take time off from work.

Georgia

Under Georgia law, if an employee is qualified and registered to vote, an employer must give that employee time off from work, not to exceed two hours, to vote in any municipal, county, state, or federal political party primary or election. However, the time does not need to be provided if the employee's hours of work begin at least two hours later than, or end at least two hours before, the polls open or close. Employees are responsible under the statute for giving their employer reasonable notice of the need for leave. The employer may specify the hours that the employee may be absent to vote. The statute does not require that the time off be paid. See O.C.G.A. § 21-2-404.

Louisiana

Louisiana employers are not required by law to provide time off from work for their employees to vote. Louisiana law does provide, however, that employers having 20 or more employees cannot prevent or forbid their employees from participating in politics, which would obviously include voting. See Louisiana Revised Statute 23:961.

Mississippi

Although there is no Mississippi law directly on point, Mississippi employers should allow employees time off to vote if necessary. Mississippi has a "coercion statute" that makes it unlawful for any employer to coerce an employee to vote (or not vote) for a particular candidate or party (Miss. Code Ann. § 23-15-871). The coercion statute also prohibits the following conduct:

1. An employer may not discharge, threaten to discharge, promote, demote or otherwise alter the terms or conditions of employment because of the employee's vote or failure to vote for any particular candidate or

party;

2. An employer may not make any public or private statement calculated to coerce any employee as to the employee's vote;
3. An employee may not canvas, or otherwise provide services, for or against any candidate or party, during the time in which the employee is being paid by the employer;
4. An employee may not use vacation time or take a leave of absence, at the employer's expense, to provide any services for or against a candidate or party or take active party in any election campaign whatsoever; and
5. An employer may not allow the employee, at the employer's expense, to take any part whatever in any election campaign, "except the necessary time to cast his vote."

The clause "except the necessary time to cast his vote" could be interpreted to mean that an employer has violated the coercion statute if the employer refuses to allow an employee time to vote. Accordingly, Mississippi employers should allow an employee "the necessary time to cast his vote."

Tennessee

Tennessee employees may take a "reasonable amount of time," up to three hours, off to vote and cannot be penalized for taking such time. Employers may specify when employees may be absent to vote, *e.g.*, the employee can be told to vote before his shift starts and arrive late. Employees must notify their employer of their intent to take time off to vote by 12:00 pm the day before the election. Note--if an employee's start time is greater than three hours *after* polls open, or ends more than three hours *before* polls close, the employer need not provide the employee with time off to vote. While the code section does not specifically indicate that the time off must be paid, most commentators construing the statute's language suggest a conservative approach, including paying for the time off, given the "no penalty" provision. Tennessee Code Annotated § 2-1-106.

Virginia

Virginia does not have an election leave statute. The Virginia Constitution, Article II, Section 9 extends certain franchise privileges to citizens, including that Virginia citizens may not be arrested under any civil process while voting, and may not be compelled to perform military service that interferes with their right to vote except at times of war or public danger. Therefore, the franchise right is protected in Virginia, but there is no law that requires employers to allow their employees time off to vote. In addition, the Virginia courts have not yet addressed the issue in any depth. Accordingly, employers do not have a legal obligation to allow employees any designated time off to vote.