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Client Alert

Time Off to Vote Requirements + Political Speech in the Workplace

Election Day 2024 is fast approaching on Tuesday, November 5. The following overview addresses the primary aspects of **time off to vote requirements, employer obligations and corresponding employee rights**.

Guidance for handling political speech in the workplace is also covered below. (Jump to Political Speech in the Workplace).

TIME OFF TO VOTE REQUIREMENTS

WHAT EMPLOYERS SHOULD DO: Time Off to Vote laws may present a significant compliance issue. It is important to familiarize yourself with the laws in those state(s) where you have employees working.

- **If you are unsure whether you must provide your employees with time off to vote or whether that leave must be paid, please contact your Engage HR Partner.**
- **If you have employees in multiple locations and are unsure which voting laws apply to those employees, please contact your Engage HR Partner**.

Even if your company employs individuals in states where voting leave is not mandated, it is good practice to allow employees to take paid time off to vote. Employers can also provide employees with information on early or absentee voting.

CONSIDERATIONS

- There is no federal law mandating that employees be given any time off to vote.
- State laws govern whether employers must provide time off to vote and whether that time must be paid.
- **Approximately 21 states and the District of Columbia require employers to provide paid time off for voting. Please consult the table on page 2.**
- Some state laws do not require employers to grant time off to employees who have enough time before or after work to get to local polls.

PROHIBITIONS

Employers may not terminate or threaten to terminate an employee for taking a reasonable amount of time off to vote on election day. Additional prohibitions include applying intimidation to employees to induce or require employees to vote or refrain from voting or for voting for or against any person running for office.

PENALTIES

Some states impose penalties on employers that prohibit employees from voting. In **Arizona**, supervisors can be fined up to $2,500 if they block someone from voting and the company can be fined up to $20,000. In **California and New York**, companies who bar a worker from voting could lose their corporate charter.

PAID TIME OFF REQUIRED

Approximately 21 states plus the District of Columbia require employers to provide paid time off (ranging from one to three hours paid time). In states that do not require paid time off, many employers go beyond what their state law requires and grant paid time off, usually one to three hours.

PAID VOTING LEAVE LAWS	UNPAID VOTING LEAVE LAWS	NO VOTING LEAVE LAWS
Alaska	Alabama	Connecticut
California	Arkansas	Delaware
Colorado	Georgia	Florida
Illinois	Kentucky	Hawaii
Iowa	Massachusetts	Idaho
Kansas	Ohio	Indiana
Maryland	Wisconsin	Louisiana
Minnesota		Maine
Missouri		Michigan
Nebraska		Mississippi
Nevada		Montana
New Mexico		New Hampshire
New York		New Jersey
Oklahoma		North Carolina
South Dakota		North Dakota
Tennessee		Oregon
Texas		Pennsylvania
Utah		Rhode Island
Washington D.C.		South Carolina
West Virginia		Vermont
Wyoming		Virginia
		Washington

POSTING REQUIREMENTS

A few states, including **California, Alabama, and New York**, require the employer to post a notice no less than ten days before the election, explaining employees' right to time off to vote. Most states do not require a posting. Where required, the notice must be posted in a conspicuous place at the work site.

- California posting requirement
- New York posting requirement

EXCEPTIONS

Some states have exceptions for allowing time off if the employee's shift begins at least a designated number of hours (e.g., two or three hours) after the polls open or ends at least a designated number of hours (e.g., two or three hours) hours before the polls close. Other states do not require an employer to provide voting leave if an employee has two continuous hours (three in some states) of off-duty time while the polls are open.

POLITICAL SPEECH IN THE WORKPLACE

It is a common misconception that the First Amendment free speech rights apply in the workplace. They do not.

Employers have several options for crafting workplace speech policies regarding politics. While each of these options has its pros and cons, it is important to remember that no matter how employers elect to proceed, they should be consistent when enforcing these policies and aim to promote civility at every turn. Setting clear expectations for what is and is not appropriate in the workplace can reduce potential conflict and maintain a respectful workplace.

EMPLOYER APPROACHES

- **Permit Political Discussions in the Workplace**

Employers may elect not to set any limitations on the discussion of politics at work to foster inclusivity and openness. This can promote a respectful and diverse work culture. Consider steps to maintain civility. Encourage respectful interactions and remind employees of company values. Address potential conflict by discouraging heated debates on company channels emphasize mutual respect and encourage employees to approach political topics from a place of curiosity and acceptance.

- **Limit Political Discussions in the Workplace**

Employers may elect to limit political speech during official work meetings to avoid disruptions. For example, employers may consider implementing policies that allow political discussions but prohibit campaigning for specific candidates or policies in the workplace.

Similarly, employers may prohibit employees from wearing campaign buttons or clothing. Employers may also want to restrict the use of company email or resources for political purposes, or request that employees avoid political discussions in customer-facing areas.

- **Prohibit Political Discussions in the Workplace**

Some employers may choose to ban political discussion entirely in the workplace.While this is generally permissible, employees may be left feeling disgruntled due to restricted opportunities to express their political beliefs or differing opinions.

Employers that choose this route should establish a clear and concise “no-politics” policy and distribute it to all employees. To avoid potential claims of discrimination, employers must be prepared to implement the policy fairly and consistently.

Be aware that limiting speech, especially among younger employees, can lead to feelings of disconnection and distrust toward leadership.

OTHER CONSIDERATIONS

Right to Discuss Labor-related Issues

Employers that enact policies prohibiting political discussion in the workplace should be mindful that federal and state laws protect an employees’ right to discuss labor-related issues.

The National Labor Relations Board (NLRB) protects discussions that involve labor-related issues such as salary, wages, or leave laws such as the federal Family Medical Leave Act. Thus, labor-related discussions in the context of politics or elections may be protected under the National Labor Relations Act. Accordingly, employers must permit discussions that fall under that category and should not discipline the employee for having those discussions in violation of the company’s “no-politics” policy.

Policy Consistency

As noted above, any policies related to political speech should be clear, neutral, and applied and enforced consistently. Keep in mind that political statements that include profanity, vulgar language, promote violence or discrimination may already violate existing company policies on professionalism or anti-discrimination.

Context and Location

Prior to taking disciplinary action, consider the type of speech, when and where it occurred, who engaged in the speech, and what was said or done. The “what” is most important.

- Is it NLRA protected speech, political speech or fall into another category? Is it discriminatory speech that violates the company’s anti-discrimination policy? Or is it hate speech which may carry criminal repercussions?
- Did the speech occur in a private social channel? In a meeting? At the park? Off duty conduct is a gray area and some states protect off-duty conduct. Employers in **California, Connecticut, Colorado, and New York** should confirm that they are compliant with additional protections for speech and off-duty conduct.

Election cycles and social issues can lead to heightened tensions and stress in the workplace. Employers should emphasize professionalism and respect and remind employees to support the company’s values and collective mission.

Please contact your Engage HR Partner if you have any questions.