

CLIENT ALERT

November 1, 2018

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INTERNATIONAL TRADE

MID-TERM ELECTION FEVER: COMING TO A WORKPLACE NEAR YOU

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Mid-term election fever has swept the nation. Both sides of the aisle, as well as independents and libertarians in between, have campaigned harder than ever before for your vote. Smear ads and dramatic media depictions have become the norm, and many of us have become desensitized to the vitriolic turn politics has taken.

Here are some things to keep in mind while managing your work force during this (and other) politically-charged times:

Voting Leave and Notice

First, many states require that employers give their employees time off to vote in certain circumstances. For example, Ohio employers must allow their employees to take a “reasonable amount” of unpaid time off to vote on Election Day. California employers must provide up to two hours of *paid* time off for an employee to vote if the employee’s normal schedule does not allow a sufficient amount of time for the employee to vote. Conversely, Michigan employers are not required to provide any voting leave to their employees. Here is a 50-state survey of voting leave laws (the shaded states do not have any requirements on voting leave):

Alaska	“Sufficient” time, unless employee has 2 consecutive non-work hours during which the polls are open.
Arizona	If the employee’s schedule is such that he or she has fewer than 3 consecutive non-work hours during which polls are open, the employee is entitled to leave early or arrive late (at the employer’s discretion) such that the employee has three consecutive hours during which the polls are open and he or she is not at work, so that the employee has sufficient time to vote. Employees should give advance notice of their plans to leave early or arrive late.
Arkansas	Employers must adjust employees’ schedules to allow employee time to vote.
California	Up to 2 hours paid at the beginning or end of an employee’s shift if the employee does not have sufficient nonworking time in which to vote. 2-days’ advance notice of voting day plans is suggested.

Colorado	Up to 2 hours paid unless employee is not scheduled to work for at least 3 hours during which the polls are open. Employer may decide which hours (although if employee requests that the hours occur at the beginning or end of the shift the employer must allow this), and advance notice is required.
Connecticut	Employers are not required to give time off to vote.
Delaware	Employers are not required to give time off to vote.
Florida	Employers are not required to give time off to vote.
Georgia	Up to 2 hours unpaid unless the employee’s workday begins at least 2 hours after polls open or ends 2 hours before polls close. Employer may decide hours and “reasonable notice” of leave request is requested.
Hawaii	Up to 2 consecutive hours paid unless employee has 2 non-work hours during which the polls are open. Employer may require proof of voting.
Idaho	Employers are not required to give time off to vote.
Illinois	Up to 2 hours paid for general election and special elections only, providing the employee’s workday begins or ends less than 2 hours after or before the polls open or close. The employer may decide what hours and the employee must give notice at least 1 day in advance.
Indiana	Employers are not required to give time off to vote.
Iowa	Up to an amount that, when added to the employee’s nonworking time that the polls are open, totals three consecutive hours while the polls are open, unless an employee has 3 consecutive non-work hours during which the polls are open. The employer can specify the hours and the employee must give written notice of their intention to take time off.

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Kansas	Up to 2 hours paid unless employee has 2 consecutive non-work hours during which the polls are open. Employer may decide what hours, but not during regular meal break.	Nevada	Granted only if it is “impractical” for an employee to vote before or after work. 1 hour paid is given to employees 2 miles or less from a polling place. 2 hours paid is given to employees 2-10 miles from a polling place. 3 hours paid is given to employees more than 10 miles from a polling place. Employer may decide what hours and employee must give advance notice.
Kentucky	At least 4 hours unpaid on election day or during early voting. Employee must notify of leave 1 day in advance and employer may decide what hours.	New Hampshire	Employers are not required to give time off to vote.
Louisiana	Employers are not required to give time off to vote.	New Jersey	Employers are not required to give time off to vote.
Maine	Employers are not required to give time off to vote.	New Mexico	Up to 2 hours paid unless employee begins work 2 hours after the polls open or finishes work 3 or more hours before the polls close. Employer may decide what hours.
Maryland	2 hours paid unless employee has 2 consecutive non-work hours during which the polls are open. Employee may be required to show proof of voting.	New York	2 hours paid and sufficient time to enable the employee to vote, unless the employee has four consecutive nonworking hours during which the polls are open. Employer may decide what hours and employee must give between 2 and 10 days’ advance notice.
Massachusetts	2 hours unpaid is required for employees in manufacturing, mechanical or mercantile establishments. Employees must request leave in advance.	North Carolina	Employers are not required to give time off to vote.
Michigan	Employers are not required to give time off to vote.	North Dakota	Employers are not required to give time off to vote but encouraged to allow time off instead.
Minnesota	Employers have to provide employees with “sufficient” time to vote, paid.	Ohio	“Reasonable” unpaid time off to vote.
Mississippi	Employers are not required to give time off to vote.	Oklahoma	2 hours paid unless employee has 3 consecutive non-work hours during which the polls are open. Employer may decide what hours; employee must give 1 day advance notice; and employer may require proof of voting.
Missouri	3 hours paid unless employee has 3 consecutive non-work hours during which the polls are open. Employer can decide what hours and employees must give advance notice of leave.	Oregon	Employers are not required to give time off to vote.
Montana	Employers are not required to give time off to vote.	Pennsylvania	Employers are not required to give time off to vote.
Nebraska	Up to 2 hours paid unless employee has 2 consecutive non-work hours during which the polls are open. Employer may decide what hours and employee must give notice in advance or on election day.	Rhode Island	Employers are not required to give time off to vote.

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South Carolina	Employers are not required to give time off to vote – employees who cannot vote in person on election day should vote via absentee ballot.
South Dakota	2 hours paid unless employee has 2 consecutive non-work hours during which the polls are open. Employer can decide what hours.
Tennessee	Up to 3 hours paid unless an employee has 3 consecutive non-work hours during which the polls are open. Employer may decide what hours and employee must give notice by noon on the day before the election of intent to use leave.
Texas	Must grant time off paid unless employee has 2 consecutive non-work hours during which the polls are open.
Utah	2 hours paid at beginning or end of shift unless employee has 3 consecutive non-work hours during which the polls are open. Employer may decide what hours (although employer must grant an employee’s request that the leave occur at the beginning or end of a shift) and employee must give advance notice of intent to use leave.
Vermont	Employers are not required to give time off to vote, but employees can use a town-hall meeting law to request unpaid leave. Employee must give 7 days’ advance notice of intent to use leave.
Virginia	Employers are not required to give time off to vote.
Washington	Employers are not required to give time off to vote.
West Virginia	3 hours paid unless employee has 3 consecutive non-work hours during which polls are open. Employers in health, transportation, communication, production and processing facilities may specify the hours. Employees must give at least 3 days’ advance written notice.

Wisconsin	3 hours unpaid. Employers may decide what hours and employee must give advanced notice of intent to use leave.
Wyoming	1 hour paid, other than a meal break, unless employee has 3 consecutive non-work hours during which the polls are open. Employer may decide what hour.

In addition, California and New York have mandatory posting requirements that require them to inform employees of their voting leave rights. California employers must post the employee notice 10 days before a statewide election. More information is available [here](#). New York employers must post notices setting forth requirements for compliance with New York’s voting leave law at least 10 working days prior to every Election Day in a conspicuous place. More information and New York’s required notice is available [here](#).

Whatever state or states that you have employees, if you have a voting leave policy in your employee handbook, review it to ensure it follows the law in your state or states and follow that policy in a consistent manner across all employees. If you do not have a voting leave policy or a policy covering jury duty, witness, and other similar “miscellaneous” leaves, consider drafting one. A succinct, clear policy addressing these issues is a good addition to an employee handbook. Even if you are not required by law to provide voting leave and do not have a voting leave policy, your employees may want to use sick leave or personal time to get to the polls in time.

In either case, if employees think they will need to take time off to vote based on their local poll’s hours of operation, they should notify their supervisor or other management personnel with as much advance notice as practicable, and work out the details for the time off with their supervisor.

Political Speech in the Workplace

As partisan politics becomes more polarized, employees may more readily engage in political discussion in the workplace. Other employees may be more uncomfortable with their coworkers’ political conversations. These discussions may productively bond employees together over shared interests and experiences. They may respectfully challenge employees’ beliefs and promote critical thinking and self-awareness. Conversely, political discussions or comments may be divisive and demoralize employees. And, depending on the nature of the workplace, these kinds of discussions may be best suited to breaks, breakrooms, or when employees are not in front of customers, clients, or patients. In light of the potential disruption political conversations can cause, you should be aware of your related rights and responsibilities as an employer.

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For private employers, *i.e.*, non-governmental organizations, their employees do not have a right to “free speech” at work as it is used in common parlance, despite what an argumentative employee may claim to the contrary. The First Amendment protects private citizens and public employees from *governmental* interference with their right to engage in protected speech. Public employee speech is only protected by the First Amendment when it is on a matter of public concern. It is also only protected when the employee’s interest in free speech outweighs the government employer’s interest in discipline in order. As such, even the First Amendment protections have limits.

Importantly, private employers *do* have to ensure that they do not prevent their employees from engaging in collective activity, such as discussing wages and other terms and conditions of employment for the purpose of mutual aid and protection. Such communications constitute protected activity under Section 7 of the National Labor Relations Act. Collective action and politics often go hand in hand, and private employers should be mindful of this. Overall, however, employees do not have free license to say whatever whenever in the workplace because “this is a free country” and they have a right to “free speech.”

On the other hand, employees *do* have the right to a workplace free from discrimination and harassment based on a legally-protected characteristic. Although political ideology is not a federally-protected class, some political rhetoric can cross the line into racist, sexist, religious, or other inappropriate commentary that impermissibly reinforces negative stereotypes about a particular protected characteristic.

It is possible some employees will cross that line and make inappropriate, disruptive, or even illegal comments. These employees should be counseled or disciplined according to your normal policies and procedures for such conduct. Now is a good time to pull out your anti-discrimination and anti-harassment policies, see what they say, and see if they need updating or revising.

Going beyond your written policies, respect is critical to a productive work environment. Sensitivity training on subconscious and implicit biases, emotional intelligence, and behavioral flexibility can be valuable tools in remedying workplace conflict. Although sensitivity training and political correctness are occasionally the butt of jokes (think of the popular Season 1 Episode 2 of NBC’s *The Office* entitled “[Diversity Day](#)”), intelligent, sophisticated programming tailored to your industry and work environment can be both meaningful and effective.

Ultimately, we live in a politically-charged time. When politics infiltrates the workplace and poses challenges, react thoughtfully and consider how these challenges can be positively transformative for your work environment.

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