

Employment Edge 116th Edition—Minnesota Voting Leave Changes for 2010

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Minnesota's statute on employee voting leave was changed by the 2010 legislature. With the midterm election just days away, Minnesota employers need to note the change, as well as recall other election-related rights and duties.

In Minnesota an employee has a right to paid time off to vote. Before the 2010 change this right applied only on the morning of election day. The revised law applies all day as long as the polls are open. Employees have the right "to be absent from work for the time necessary to appear at the employee's polling place, cast a ballot, and return to work." Generally, an employer may not dock pay, personal leave, or vacation for voting leave. An employer who refuses, abridges, or interferes with an employee's right to voting leave is guilty of a misdemeanor.

May employers impose any limitations on voting leave? Encouraging employees to vote "is an excellent way to promote civic engagement and support our democracy," according to the Secretary of State. Many employers may be willing to go beyond statutory requirements to further these aims. That could be an issue under campaign finance laws, but not as long as the encouragement is clearly non-partisan. But even employers eager to promote civic engagement will want to avoid workday disruptions.

Unfortunately, there are virtually no decisions or regulations interpreting this statute, even in its previous form. In the absence of anything more definitive, the following is reasonable guidance for employers to consider in complying with their voting leave duties:

- **Advance Notice.** The statute does not prohibit employers from requesting advance notice of absences for voting time. Where an employee fails to give advance notice, an employer could impose reasonable discipline. It would violate the law, however, if the employer prevented the employee from taking leave for this reason. Furthermore, the employer should take care that the discipline not be construed as punishment for exercising the right to voting leave.
- **Time Limits.** The statute's vague language does not provide an outer limit on voting leave time. Employers are free to communicate what they consider a reasonable time limit, but should be careful about imposing the limit too strictly.
- **Unnecessary Time.** It might be argued that voting time is not "necessary" if an employee has sufficient time to vote outside of work hours. However, employers should be careful about refusing voting leave. If



any part of an employee's shift takes place when polling places are open, the employee probably has the right to paid voting leave.

- **Proof.** Employers may require employees to account for their time and to show proof that they voted, as long as such requirements are not communicated in a way that would tend to discourage or interfere with use of voting leave. Employers do not have to pay voting leave to employees who are not scheduled to work on election day or who actually vote outside of working hours.
- **Notice to Employees.** Employers are not obligated to notify employees of the right to voting leave. However, it may be that communicating with employees about voting leave and related policies will not only increase civic engagement, but also minimize workday disruptions.

Other election-related laws that Minnesota employers should know about include an employee's right to (unpaid) time off to serve as an election judge (provided the employee gives 20 days written notice), and the right of employees elected to public office to take (unpaid) time off to attend to their official duties.

Voting rights laws vary from state to state. Employers should ensure that they are familiar with the laws of each state where they employ workers.

If you have any questions about voting leave or other employment or labor matters, please contact Mark Mathison, Meghann Kantke, or any other member of GPM's Employment Law practice group.

Mark S. Mathison
612.632.3247
mark.mathison@lathrooggpm.com

Meghann F. Kantke
612.632.3414
meghann.kantke@lathrooggpm.com

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