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Voting Laws: An Employer's State-by-State Guide

In light of the upcoming elections, we thought you might find the following information regarding state laws requiring employers to give employees time off in order to vote helpful. Generally, such laws require that employees who are registered voters be given time off in order to cast their votes at the polls. In a number of states, however, this time off is only guaranteed if the employee does not have enough time to cast a ballot outside regular working hours. Some states require that the time off be paid, while others have no such requirement.

Because the laws vary from state to state, a uniform policy may not be appropriate if your organization has facilities in more than one state. Furthermore, compliance can be critical because penalties for noncompliance include significant fines and/or imprisonment in some states. The following is a listing of states that currently have laws, including a summary of their individual provisions regarding time, pay and penalties.

If you need additional information on voting time off, or would like assistance in developing a policy or policies for your organization, please contact any of the Wildman, Harrold, Allen & Dixon partners listed at the end of this memorandum.

This client memorandum is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned here.

Promotional Material

ALASKA

- Time: Employees who do not have sufficient non-work time to vote (i.e., do not have at least two hours available either before or after work during which the polls are open) may take off time sufficient to enable them to vote.
- Pay: Time off must be with pay.
- Penalty: Not Specified

ARIZONA

- Time: Employees must be given up to three consecutive hours if they do not have at least three consecutive hours of non-working time at the beginning or end of the work day while the polls are open. Employees must submit a request to be eligible for time off prior

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to election day. The employer may specify the hours to be used, although those hours must be consecutive.

- Pay: Employers are **required to pay** normal wages for any time taken.
- Penalty: An employer who does not comply with Arizona law is guilty of a class 2 misdemeanor and may be **fined** up to $750.

**ARKANSAS**

- **Time:** The employer must **schedule work hours** so that each employee can vote.
- Pay: Not Specified
- Penalty: An employer that does not comply with Arkansas law is subject to a **fine** of between $25.00 and $250.00.

**CALIFORNIA**

- **Time:** Employees must be given **sufficient time off** to enable them to vote at either the beginning or end of the shift, unless otherwise agreed upon by the employer and employee. Employees must make an application for time off at least two work days before the election if they know or should have known that extra time would be needed. Employers must post a conspicuous **notice** of any statewide election, along with a list of employee’s rights and duties, at least ten days before the election.
- Pay: Employers are **required to pay** employees normal wages for the time off for up to **two hours**.
- Penalty: An employer who does not comply with California law may be fined an amount not exceeding $1,000 or face imprisonment for sixteen months or two to three years.

**COLORADO**

- **Time:** Employees must be allowed to be absent from work for up to **two hours** in order to vote unless the employee has three or more consecutive non-working hours during the polling period. To be eligible for the time off an employee must make an application prior to the day of the election. Employers may specify the hours for the absence. At employee request, such hours must be either at the beginning or end of the shift.
- Pay: The employer **must pay** absent employees their normal wages for the **two hours**.
- Penalty: Failure to comply with Colorado law may subject employers to **fines** up to $1,000 and/or **jail** for up to one year. Any corporation that fails to comply may also forfeit its charter and right to do business in Colorado.

**GEORGIA**

- **Time:** Employees must be allowed to take off **up to two hours** unless the employee has two hours of free (non-work) time while the polls are open. To be eligible, the employee must give the employer reasonable notice of his/her need for the time off. The employer may specify which hours the employee may be absent.

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• Pay: Not Specified
• Penalty: Not Specified

HAWAII

• Time: Employees must be allowed up to two consecutive hour’s absence (not including lunch or rest periods) unless the employee has two consecutive non-working hours while the polls are open. Additionally, employees must be able to prove, via a voter’s receipt that the time taken was actually used for voting.

• Pay: Employers must pay the employees normal wages for the period of absence, and they may not reschedule the employee's work time to bring it within the two-hour "free time" exception. If the employee does not use the time granted to vote, the employer may make the appropriate deductions from the employee's salary or wages.

• Penalty: Failure to comply with Hawaii law may subject employers to a fine of between $50 and $300.

ILLINOIS

• Time: Employees are allowed up to two hours off in order to vote. Employees must apply for such absence prior to election day.

• Pay: Employers may specify the hours which the employee must take. Employers are not required to pay employees for time off, but they may not issue penalties or sanctions against employees who take time off.

• Penalty: Not Specified

IOWA

• Time: Employees are allowed up to three hours off in order to vote unless they have three consecutive hours of free time during hours when the polls are open. The actual amount of time that must be granted depends upon how much non-working time the employee has during poll hours. To be eligible for time off the employee must make an individual written application for absence prior to the day of the election. Employers may designate the specific hours to be taken.

• Pay: The Employer must pay normal wages for the time taken and refrain from subjecting the employee to penalties.

• Penalty: Not specified.

KANSAS

• Time: Employees are allowed to be absent from work for up to two consecutive hours on election days (not including lunch periods). The employer may specify the time of day during which the hours must be taken, but such hours may not include the lunch hour.

• Pay: The employer must pay normal wages to the employee and refrain from otherwise penalizing the employee.

• Penalty: Failure to comply with Kansas law may subject employers to fines up to

$2,500 and/or jail up to 30 days.

KENTUCKY

- **Time**: Employees may be absent from work for up to **four hours** during poll hours on election days. Employees also must be given up to **four hours** to request applications or execute absentee ballots on the day they appear before the clerk. The employer must allow employees to take time without penalty unless the employee fails to vote. The employer, however, may specify the hours the employee must take.

- **Pay**: The employer is **not required to pay** the employee during the absence.

- **Penalty**: Not Specified

MARYLAND

- **Time**: Employees who claim to be registered voters may take up to **two hours** to vote unless they have two continuous non-working hours during the polling period. To be eligible, employees must provide proof from the election judge that they voted or attempted to vote.

- **Pay**: Employers are **required to pay** employees who verify that they have voted.

- **Penalty**: Not Specified

MASSACHUSETTS

- **Time**: Employees in mechanical, manufacturing and mercantile establishments must be allowed to take off the **first two hours after the polls have opened**. To be eligible employees must apply for the leave.

- **Pay**: Not Specified

- **Penalty**: Failure to comply with Massachusetts law may subject employers to a **fine** of up to $500.

MINNESOTA

- **Time**: Employees are allowed to take time during the **mornings of election days**. The time must be used to vote.

- **Pay**: The employer must allow employees the time off with pay and without penalty.

- **Penalty**: Failure to comply with the Minnesota voting time off law subjects employers to **fines** of up to $700 or three months in prison.

MISSOURI

- **Time**: Employees must be allowed up to **three hours** to vote on election days. If employees have three consecutive non-working hours during the hours when polls are open, no time off need be granted. Employees must request the time prior to election day. The employer may specify the hours to be taken.


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- Pay: The employer **must pay** normal wages during the period of absence and may not punish employees who exercise their privilege to take time off to vote.

- Penalty: Failure to comply with the Missouri voting law subjects employers to a **fine** of up to $2,500 and/or 1 year in **jail**.

**NEBRASKA**

- Time: Employees may take up to **two consecutive hours** unless the polls open either two hours before or two hours after working hours. The employee must request time prior to the election day. The employer may specify the hours that an employee may take off.

- Pay: Employers **must pay** normal wages for the time and may not punish employees for taking time to vote.

- Penalty: Not Specified

**NEVADA**

- Time: Employees are allowed time on election days to vote if they do not otherwise have "sufficient" free time to do so. The absence allowed varies **between one and three hours**, depending on the distance between the work place and the polling site. Employees must apply for time prior to election day. Employers may designate the specific time employees may take.

- Pay: Employers **must pay** normal wages for the time away from work and may not punish employees for exercising their voting privileges.

- Penalty: Failure to comply with Nevada law may subject employers to a **fine** of up to $1,000 and/or **jail time** of up to six months.

**NEW MEXICO**

- Time: Employees may be absent from work for up to **two hours**, unless they have two free hours before work or three free hours after work while the polls are open. The employer may designate the hours to be taken but it may not include lunch or rest hours or schedule the employee’s work to fit the free time exception.

- Pay: Although there is no provision within the law regarding pay, the Attorney General has construed the law to require pay. Payment for time to vote is limited to two hours for hourly paid workers (except where the work day ends more than three hours before polls close).

- Penalty: Failure to comply with New Mexico law may subject employers to a **fine** of between $50 and $100.

**NEW YORK**

- Time: Employees are allowed to take "**sufficient time**" on election day as is necessary to allow them to vote. It has been determined that **four consecutive non-working hours** while the polls are open is "sufficient." However, if the employee has four consecutive free hours either between the opening of the polls and the beginning of work or between the end of work and the closing of the polls, the employer is not required to
provide any additional time off. The employee must notify the employer of the need for time off not more than ten days and not less than 2 days before the election. The employer must post a conspicuous notice of employee rights and duties under this law for a period of at least ten days before the election day. Employers may designate whether the time is to be taken at the beginning or end of the shift.

- Pay: Employers are only required to pay employees for up to two hours of their time.
- Penalty: Failure to comply with New York law may subject the employer to a fine of between $100 and $500 and/or jail up to one year (for first time offenders). Repeat violations may constitute a felony.

NORTH DAKOTA

- Time: North Dakota law encourages employers to provide time off to vote when an employee's regular work schedule conflicts with the times polls are open. Adoption of the recommended policy is voluntary.
- Pay: Not Specified
- Penalty: Not Specified

OHIO

- Time: Employees must be allowed a reasonable time off from work to vote (no amount of time specified). Employees who are election officials for purposes of voter registration and poll watching must be allowed time off also.
- Pay: Employers must pay employees for the time taken off to vote, unless employees are paid an hourly wage, on a piece work basis, or receive a commission. Employees who take time off may not be penalized.
- Penalty: Failure to comply with Ohio law may subject employers to a fine of $50 to $500.

OKLAHOMA

- Time: Employees who do not have three hours of free time either between the opening of the polls and the beginning of work, or between the end of work and the closing of the polls, must be allowed at least two hours to vote. More time must be granted if necessary. Employees must notify their employers of the need for time off the day before the election. Employers may specify the hours that an employee must take to allow for a total of three free hours during the polling period before or after a full work day.
- Pay: Employers must pay wages for the time taken off if the employee proves that he/she actually voted. Further, they may not penalize employees for taking time off.
- Penalty: Failure to comply with Oklahoma law may subject employers to a fine of $50 to $100.

SOUTH DAKOTA

- Time: Employees must be allowed two consecutive hours to vote. However, if the

employee has two free, non-working hours during poll hours, an employer is not required to provide additional time to vote. Employers may determine the specific time allowed off.

- Pay: Employers **must pay** normal wages for the time taken, and they may not penalize employees for exercising their time off privilege.

- Penalty: Failure to comply with South Dakota law may subject employers to a **fine** up to $200 and/or jail up to 30 days.

**TENNESSEE**

- Time: Employees must be allowed up to **three hours** to vote. However, if the employee has three consecutive hours of free, non-work time between the opening and closing of the polls, the employer is not required to provide additional time. Employees must notify the employer of their need for time off before noon on the day prior to the election. Employers may specify the hours employees must take off.

- Pay: Employers **must pay** normal wages and may not penalize workers absent for voting.

- Penalty: Not Specified

**TEXAS**

- Time: Employees must be allowed **time** to vote unless they have two consecutive non-working hours during polling hours in which to vote. There is no specific provision, but the law has been construed as giving the employer the right to specify the hours that an employee may take.

- Pay: The employer **must pay** the employee normal wages for the time taken.

- Penalty: Failure to comply with Texas law may subject the employer to a **fine** of up to $500.

**UTAH**

- Time: Employees must be allowed up to **two hours** in order to vote, except where they have three or more hours of non-working time available during poll hours. To be eligible, employees must apply for the time prior to election day. The employer may specify the hours that are to be taken, but if the employee requests that time be given at the beginning or end of a work shift, the employer must comply with the request.

- Pay: Employers **must pay** normal wages for the time granted.

- Penalty: Failure to comply with Utah law may subject employers to a **fine** of up to $1,000 and/or jail time up to six months. Corporations may be fined up to $5,000.

**WASHINGTON**

- Time: Employers must schedule their employees’ working hours on the day of an election to allow a reasonable time of up to **two hours** to vote. However, this provision does not apply if the employee is informed of his/her work schedule for an election day in sufficient time to obtain an absentee ballot.


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- Pay: If a work schedule does not provide enough time to vote, excluding meal or rest breaks, an employee must be given a reasonable time off with pay.

- Penalty: Not Specified

WEST VIRGINIA

- Time: Employees must be allowed up to three hours to vote on election days. Employees must request the necessary time off in writing, however, at least three days before the election. Employers in essential governmental, health, hospital, transportation or communication fields may schedule the time to be taken off so as to prevent interruption of services. However, such schedules must allow sufficient time for the employees to vote.

- Pay: Employers must pay normal wages for up to three hours voting time, unless the employee has three hours of non-working time available to vote.

- Penalty: Failure to comply with the West Virginia time off to vote law may subject employers to a fine of up to $500 for non-corporate employers and $1000 for corporations and/or six months imprisonment for non-corporate employers and corporate officers, agents or managers.

WISCONSIN

- Time: Employees must be allowed up to three hours to vote on election days. The employee must notify the employer prior to election day of the need for time.

- Pay: Employers may take a deduction off wages for time taken to vote and may designate the time of day for absence. Employers may not penalize employees for exercising the privilege.

- Penalty: Failure to comply with Wisconsin law may subject employers to a fine of not more than $1,000, or imprisonment for not more than six months, or both.

WYOMING

- Time: Employees must be allowed one hour off to vote on election days unless the polls are open for three or more consecutive non-working hours. Employers may designate the time to be taken, although that may not coincide with the employee’s meal hour.

- Pay: The employer must allow employees the requisite time without loss of pay, unless an employee does not actually vote.

- Penalty: Not Specified

The states without time off to vote laws are:

Alabama
Connecticut
Delaware

District of Columbia
Florida
Idaho
Indiana
Louisiana
Maine
Michigan
Mississippi
Montana
New Hampshire
New Jersey
North Carolina
Oregon
Pennsylvania
Rhode Island
South Carolina
Vermont
Virginia

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