



## Electors Entitled to Reasonable Amount of Time to Vote

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Election Day is November 8, 2011. With this date fast approaching, employers should consider their rights and obligations with respect to employees' exercise of their rights to vote.

Ohio election law prohibits an employer, and its officers or agents, from:

- - Discharging or threatening to discharge an elector for taking a reasonable amount of time to vote on Election Day;
  - Requiring or ordering an elector to accompany the employer, officer or agent to a voting place on Election Day;
  
  - Refusing to permit an elector to serve as an election official on any registration or Election Day; or
  - Indirectly using any force or restraint, threatening to inflict any injury, harm, or loss, or otherwise intimidating an elector in order to induce or compel such person to vote or to refrain from voting for or against any person, question or issue submitted to the voters.

What Is “A Reasonable Amount of Time to Vote”?

The law does not specify what constitutes “a reasonable amount of time” for an elector to be absent from work to vote. Thus, an employer must make a judgment call as to what meets the standard. In evaluating this, we suggest that employers consider relevant factors, such as an employee’s travel time from the worksite to the particular polling site and back and the employee’s means of travel (i.e., personal car vs. public transportation). Employers should also consider any known characteristics of a particular polling site that may cause delay.

Are All Employees Entitled To This Protection?

Notably, the statute does not use the term “employee.” Rather, the term “elector” is used and does not necessarily encompass all employees. An “elector” meets the following requirements:

- - U.S. Citizen;
  - At least 18 years old;
  - Resident of Ohio at least 30 days immediately preceding Election Day;
  - Resident of the county and precinct in which the citizen offers to vote;
  - and
  - Registered to vote at least 30 days prior to Election Day.

With the level of detail involved in this definition, an employer may find it difficult to readily verify whether a particular employee is an “elector” entitled to the law’s protection. Thus, it may be prudent and/or more efficient for an employer to accept an employee’s self-identification as an “elector.”

#### Are Electors Entitled to Paid Time Off?

The answer depends upon whether an elector is a salaried employee or an hourly employee. According to a longstanding Ohio Attorney General opinion, employers cannot dock the pay of salaried employees for their reasonable absence from work to vote.

In contrast, employers are not required to pay workers employed on a piecework, commission, or an hourly basis for their time away from work to vote. The reasoning behind this distinction is that the latter group of employees is entitled only to compensation for work actually performed or for the amount of time actually spent in their employment; thus, the employees do not incur a loss or a reduction in compensation when absent from work due to voting.

If an employer were to reduce a salaried employee’s wages for the reasonable time spent voting, such action would result in an “injury” or “loss” to the employee and amount to a withholding of wages. If the employer did so in order to induce or compel the employee to vote or refrain from voting for or against any person, question, or issue on the ballot, the employer would violate Ohio Election Law and be subject to a fine varying between \$50 and \$500 per incident. In addition, such a practice may run afoul of the Fair Labor Standards Act and/or Ohio wage and hour law.

#### Laws of Neighboring States

A few of Ohio’s neighboring states also provide employees with time off to vote in certain circumstances. For example, Kentucky permits unpaid absences of not less than four hours, and West Virginia permits paid absences of up to three hours, with exceptions. Unlike Ohio, both of these states require advance notice from the employee. In contrast, Indiana, Michigan and Pennsylvania do not have time-off-to-vote laws. If you are an employer with workers in these states, you should familiarize yourself with the specifics of the applicable state laws.

