

Paid voting leave rules: A closer look at New York's new law

In the early morning hours of April 1, 2019, the state of New York passed its new yearly budget. The legislation contained an under-the-radar provision that revised the law regulating paid leave so employees can cast ballots during elections.

Previously, the law provided that if an employee had four consecutive hours either between the opening of the polls and the start of his or her shift, or between the end of his or her shift and the closing of the polls, the employee would be deemed to have had sufficient time to vote and was not entitled to paid time off to vote. If the employee did not have one of those four-hour windows, it was permissible to take up to two hours of paid time off to vote either at the beginning or end of his or her shift.

Three new rules

The new law, which went into immediate effect, makes several important changes.

First, the amount of paid time off that must be granted for voting leave changes from “up to two hours” to “up to three hours.”

Furthermore, under the previous law, employees used to have a limited period of time between two and 10 days before an election to notify their employer of their need for paid time off to vote. The new law eliminates the outside limit of 10 days and just requires employees to request the paid time off to vote not less than two working days before the date of the election.

Finally, and perhaps most significantly, the new law eliminates the presumption that an employee is not entitled to paid time off to vote if he or she has four consecutive hours outside of work time to vote.

Paid leave almost guaranteed

By eliminating the four-hour consecutive window, the law virtually guarantees that all employees who request time off for voting must be granted sufficient paid time off to enable them to vote, up to a maximum of three hours. The effect that this could have on some employers may be profound—especially those who previously did not grant paid leave for elections because they could ensure that all employees had four consecutive hours off in which to vote.

School districts may find the new law particularly problematic. Under the previous law, school district employees such as teachers and bus drivers almost always had four consecutive hours off between the end of their work day and the closing of the polls, which usually occurs at 9:00 p.m. That meant those employees were not eligible to take paid leave to vote.

Those previously ineligible employees arguably must now be granted up to three hours of paid time off for voting.

A way to deny leave?

Employers may still have a basis for denying paid voting leave (or granting something less than the maximum of three hours of voting leave) on the grounds that the statute only allows employees to “take off so much working time as will enable him or her to vote.”

However, it is not clear whether employers can ask for verification that employees actually voted and how long it took them to vote. Furthermore, the statute formerly allowed employees to “take off so much working time as will, *when added to his voting time outside of working hours*, enable him to vote.”

The amendment to the law eliminated the italicized phrase, which suggests that the amount of time an employee has to vote outside of working hours can no longer be considered in determining how much paid time off an employee is entitled to take to vote.

Setting aside these unresolved questions, school districts and similarly situated employers must now carefully consider the implications of all of their employees who are registered voters requesting up to three hours off to vote “at any election.”

Implementation still unclear

Exactly which elections qualify for paid leave under this law also remains an open question, but the language of the law is certainly broad enough to support an interpretation that all federal, state and local elections would be covered.

Regardless of the number or type of elections that the law extends to, affected employers must begin to plan for substantial portions of their workforce to make requests to be absent for up to three hours on election days. This will almost certainly mean increased scheduling problems. This situation becomes even more complicated when other considerations, such as employment agreements and obligations arising under collective bargaining agreements, are also factored into the analysis.