

First Wednesday

By Jeffrey A. Snyder

A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management

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Election Special: Employer's Duties Regarding the General Election

Employers have certain requirements on and before Election Day. Most importantly, employers must provide sufficient time off to vote in any state-wide election to any employee who does not have sufficient time to vote outside of working hours. Up to two hours of that time must be given without loss of pay. Whether an employee is entitled to the time off depends on the employee's specific circumstances. The law (California Elections Code section 14000) applies to all employers, both public and private sector, and regardless of size.

The time off for voting shall occur at the beginning or end of the person's regular working shift, whichever allows the most free time for voting and the least time off, unless the employer and employee agree otherwise. The case law is undeveloped regarding what is meant by "sufficient time to vote," but employers should err on the side of caution. In general, if a voter does not have sufficient time outside of working hours to vote, the voter may "take off enough working time that, when added to the voting time available outside of working hours, will enable the voter to vote." (Elections Code section 14000.)

How Does an Employer Know if Voting Time Off is Necessary?

While the polls in California are open from 7:00 a.m. to 8:00 p.m., some employees will still need extra time before or after their shift based on the location of their polling place and considering their work commute, plus other issues (for example, child care or appointments) that might limit the ability to vote.

The employee must notify the employer on the third working day prior to the day of the election, if the employee "knows or has reason to believe" that time off will be necessary to be able to vote. The wording of the statute leaves room for an emergency within the three days, so employers should be prepared to accommodate voters with "last-minute" situations.

What Are The Penalties For Non-compliance?

The statute does not provide any means of civil enforcement or remedy for a wronged employee. Quite possibly, the aggrieved employee could bring a civil action alleging an unfair or unlawful business practice under Business & Professions Code section 17200. Moreover, the California Elections Code provides that any person charged with performance of any duty under any California law relating to elections who willfully neglects or refuses to perform it, may be punished by a fine not exceeding \$1,000 or by imprisonment in state prison for up to three years, or both. (Elections Code section 18002.)

Other Employer Duties under the Elections Code

Elections Code section 14001 requires that an employer conspicuously post a notice regarding the voting time off rules at least 10 days before every state-wide election. This posting is included within the California Chamber of Commerce poster regarding California minimum wage, leave laws and other mandatory postings.

Elections Code section 12312 also protects an employee's right to serve as an election officer on Election Day without being suspended or fired. In this case, the employer must provide the time off, but the employee is not entitled to be paid.

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