



Voting Rights

Who, What, Why . . .

Who does it apply to: The Texas Election Code rules for employee voting rights and time off apply to all Texas employers.

Can I do it myself: Who is protected: All employees, including temporary or seasonal workers, are protected.

What is protected: Basically there are three protections. First, an employer must give employees time away from work to vote if the employee does not have otherwise sufficient free time while the polls are open. Second, an employer must allow the employee to take the time off without threats, intimidation or any other penalty. Third, an employer cannot reduce or threaten to reduce an employee's wages or other benefits for voting for or against a particular candidate or refusing to disclose how they voted.

How much time must I give my employee to vote: An employee must be given a reasonable amount of time off of work in order to vote. Reasonable is not defined by any law, but the Texas Workforce Commission recommends allowing up to two hours. Employers do not have to give employees time off during the workday if the employee has already voted in Early Voting or if the employee has two hours of uninterrupted time during a day to vote. Finally, employers can define when the employee takes the time during the day as long as it reasonably gives the employee enough time off to vote.

Do I have to pay my employees when they take time off during the workday to vote: Yes, the law says that an employer may not penalize an employee for attending polls on Election Day. That said, employers do not have to pay if the polling place is open for two consecutive hours outside of the employee's regular work schedule.

Does the time my employee is out count towards overtime: Yes, but an employer generally has the right to set the time that an employee may have off to vote.

What about time an employee takes off to attend political conventions: An employee may take unpaid time off to attend a precinct convention or other political convention. Such an employee may not be retaliated against or dismissed for taking the time. Note, employers must be careful when deducting pay like this for employees exempt from overtime. See the Employer Handbook editions on Overtime and Exemptions from Overtime for more information.

Can I make my employee show proof that he voted: There is nothing in the law that prohibits an employer from requesting proof of voting; however, it is not mandatory that an employee provide such proof.

How much notice must my employee give me: There is no requirement that an employee give notice to their employer of their intent to vote, but employers can create a policy requiring notice and discipline an employee for failing to follow that notice policy.

Common Situations:

Voting for overtime pay: J.D. is coming in at 7:00 a.m. for his daily shift and asks his boss for an extra hour at lunch to vote. Following the law, the boss-man lets J.D. have the extra time. That night, J.D. decides to work an extra hour to make up the time. Does J.D. get credit for the hour to vote and the extra hour he worked? Does it count toward overtime? Yep and nope. An employee who voluntarily turns in extra time in addition to the time off for voting gets credit for the hour worked and the voting time, but does not get extra pay or the overtime associated with it. Strange rule.

Controlling the masses: Mary Jane is undecided about who she will vote for in the upcoming election. Her supervisor, Phil, is very involved in politics and often engages the employees in political discussions and encourages all of the employees to vote for his favorite candidate. As Mary Jane leaves for the day, he shouts, "You better vote for my guy or you are FIRED!" Mary

Jane calls into work the next day, unsure if she still has a job. Phil tells her it was just a joke and tells her to report for work that morning. Has the supervisor violated the law? There is a fine line here. Mary Jane has not been subjected to any penalty, but she has been intimidated by her supervisor. An employer may not threaten the loss wages or another benefit of employment in retaliation for voting a particular way. It may not get very far, but Mary Jane has a claim and the company will be on the hook for the legal fees to fight it.

Do it on your own time: Betsy is scheduled to arrive for her shift at 9:00 a.m. She says that given the morning traffic, there is no way she can vote and be on time. Traffic doesn't matter for poor Betsy. As long as the polls are open for two consecutive hours when Betsy is not scheduled to be at work, she doesn't get the time. Texas polling places are open from 7:00 a.m. to 7:00 p.m.

What Should I Do:

Good: Encourage your employees to exercise their Constitutional right to vote. Warn managers and other supervisory personnel that they cannot restrict any employee's ability to vote, nor can they intimidate or harass the employee for voting for a particular party or candidate or failing to reveal for whom the employee voted.

Better: Create a written policy that clearly spells out what will happen when an employee needs time off to vote. Cover when the employee needs to notify you, the time you will pay for an employee to be out, if any, and how you will deal with requiring proof of voting.

Best: Good and Better get it done for this edition.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@grayreed.com or by phone at **469.320.6063**