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A Refresher On Voting Leave

By Suzanne M. Glisch

I recently returned from Oktoberfest. And no, I am not talking about the Oktoberfest held in La Crosse, Wisconsin - I am talking about the real deal in München, Germany. Needless to say, any thoughts of reality and my life back here disappeared the minute that first sip of German beer hit my lips as I listened to the thousands of people around me yelling "Prost!" Indeed, for obvious reasons, the upcoming presidential election was not on my mind. That is, until everyone who discovered that I was from America asked about it and wanted to put in their two cents about the candidates.

While election talk only (naturally) came after questions about whether I love certain (outdated) songs that are currently popular abroad and/or questions about why Americans love flip-flops so much, all of the questions I fielded about the election and candidates got me thinking about my own plans for Election Day. And while I have always been an advocate of encouraging every eligible person to utilize his/her voting rights, it then occurred to me that perhaps not everyone, including employers, is familiar with an employee's right to leave from work to cast a vote on Election Day. It is therefore essential for all employers and employees to look into their states' voting leave laws now so that they can be prepared for Election Day.

In Wisconsin, for example, any person who is eligible to vote in an election is entitled to be absent from his/her place of work for a period of time not to exceed three successive hours to vote. This time period, of course, only covers a three-hour span during which the polls are actually open. Further, Wisconsin requires that the employee notify his/her employer prior to Election Day of the intended absence for voting purposes. It is also important to note in this regard that Wisconsin allows an employer to designate the time of day for the absence. In other words, the employer can designate a single three-hour period for all employees to

go vote and/or can designate a specific three-hour time period for each individual employee who notifies the employer that he/she intends to leave work in order to vote. Finally, in Wisconsin no penalty - other than a deduction in pay for time lost - may be imposed upon an employee by his/her employer because the employee took voting leave.

While Wisconsin's voting leave statute is quite straightforward, some states' laws differ significantly. For instance, in Arizona, a person entitled to vote may be granted leave for the purpose of voting only if there are less than three consecutive hours between the opening of the polls and the beginning of his/her regular workshift or between the end of his/her regular workshift and the closing of the polls. In that event, the employee is allowed leave for such length of time at the beginning or end of his/her shift that, when added to the time difference between workshift hours and opening or closing of the polls, will provide a total of three consecutive hours. Further, in Arizona an employee who intends to utilize voting leave must apply for the leave with his/her employer prior to the day of the election; although, an employer who refuses an employee the right conferred by the Arizona statute, or who subjects an employee to a penalty or reduction in wages for exercising his/her voting leave rights, is guilty of a misdemeanor. In contrast, the Minnesota voting leave statute simply grants eligible employees the right to be absent from work for the purpose of voting on the day of certain defined elections, without specifying a certain amount of time during which the employee can be absent on that day.

For its part, New York not only allows time off for voting but also imposes certain requirements on employers to post a notice to employees of their right to take voting leave. In New York, a registered voter may, without loss of pay for up to two hours, take off time such time that, when added to voting time outside of work, will enable the employee to vote. Under the statute, if an employee has four hours between the opening of polls and the beginning of a shift, or four hours between the end of a shift and the closing of the polls, that is considered "sufficient time" in which to vote. If that four-hour gap does not exist, then an employee is eligible to take voting leave. However, that leave "shall be allowed . . . only at the beginning or end" of the employee's working shift, as designated by the employer, unless the employer and employee agree otherwise. Any employee seeking to take voting leave must notify his/her employer "not more than ten nor less than two working days" before the day of the election. Additionally, at least ten working days prior to the election, employers must "post conspicuously in the place of work where it can be seen as employees come or go to their place of work" a notice setting forth employees' rights under the voting leave statute. That notice must remain posted until the close of polls on Election Day.

Because of the potentially vast differences in each state's laws, it is important that both employers and employees familiarize themselves with their particular state's voting leave rights prior to Election Day. I would also suggest (responsibly) enjoying an Oktoberfest-sized beer while watching

the election results later that evening, as it will undoubtedly be essential for those individuals whose candidate loses and/or a pleasant added bonus for those individuals whose candidate ultimately prevails.

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