

Labor & Employment Update

Employers Obligated to Grant Employees Paid Time Off to Vote

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As Election Day nears, many employers anticipate that their employees will be arriving to work late or leaving early to vote. Employers should be aware that Arizona law requires them to grant their employees up to three consecutive hours of paid leave to permit their employees to vote under certain circumstances. See A.R.S. § 16-402. In determining whether employees are entitled to such leave, bear in mind the following conditions:

1. The employee must be “entitled to vote at a primary or general election held within this state.” Although the term “entitled to vote” is not defined, presumably, it requires that the employee be registered to vote and that the employee has not cast his or her vote through an Early Voting Ballot.

- Employers should be aware that an employee is considered registered to vote for this election only if the employee’s registration form was completed and mailed to the Elections Department on or before October 4, 2004, 29 days before the November 2, 2004 election. See A.R.S. § 16-101 (A) (3)

2. The employer must grant paid leave only “if there are less than three consecutive hours between the opening of the polls and the beginning of [the employee’s] regular workshift or between the end of [the employee’s] regular workshift and the closing of the polls.” On November 2, 2004, the polls in Arizona will be open from 6:00 a.m. until 7:00 p.m. Thus, if an employee is scheduled to work from 7:00 a.m. until 5:00 p.m., the employee is entitled to either two hours of paid leave at the beginning of his or her shift or one hour of paid leave at the end of his or her shift.

3. The employee must have requested the leave “prior to the day of election.” Consequently, an employee is not guaranteed paid leave unless he or she has requested it ahead of time.

4. The employer may determine which hours of the workday the employee may take the paid leave. Thus, in the example above, the employer could choose to give the employee one hour of paid leave at the end of the shift rather than two hours at the beginning of the shift.

Although not well known, this law should not be taken lightly. Employers who fail to comply with the statute could be facing criminal liability. An employer who violates this statute is criminally liable for a class 2 misdemeanor. See A.R.S. § 16-402 (B). An individual who is convicted of a class 2 misdemeanor could face up to four months in jail and a fine of up to \$750, and companies convicted

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of a class 2 misdemeanor could face a fine of up to \$10,000. See A.R.S. §§ 13-707 (A) (2), 13-802 (B) & 13-803 (A) (3).

It is also worth noting that Arizona law allows voters to be in a voting booth for no more than five minutes when other voters are waiting to use the booth. In fact, if a voter refuses to leave after five minutes, the voter may be physically removed. If the voter has not completed his or her ballot after the allotted five minutes, the voter may request that the marshal hold the ballot and, when another booth is empty and all voters present have had an opportunity to vote, the removed person may be allowed an additional five minutes in the booth. See A.R.S. § 16-580 (C)

Also, although Arizona law generally proscribes more than one voter in a voting booth at a time, voters are entitled to bring a minor child with them into the voting booth. See A.R.S. §§ 16-515 (D) and 16-580 (G).

If you have any questions, please feel free to contact Fennemore Craig for more information.

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