

Thursday, October 30, 2008

Labor and Employment Update

Mandatory Voting Leave Requirements

By Amy Abdo and Kevin M. Green

Election Day is Tuesday, November 4. While federal law protects the *right* to vote, it does little to ensure that working citizens are actually *able* to vote. For instance, no federal statute requires that employers permit employees time off from their normal work schedule to vote.

Most states, however, do require that employers grant their employees paid leave for purposes of voting if the employee cannot vote during non-work hours. Arizona, Colorado, and Nevada employers all must grant employees paid time off to vote under certain conditions, which are summarized below.

ARIZONA

Under Arizona law, private and public employers must grant employees up to three hours of paid leave for the purpose of voting if the following three conditions are satisfied:

- The employee is eligible to vote in the election;
- The employee requested a voting leave prior to the day of the election; and
- Less than three consecutive hours exist between either:
(1) the opening of the polls and the beginning of the employee's regular work shift; or (2) the end of the employee's regular work shift and the closing of the polls.

Assuming that these three conditions are met, the employee is entitled to paid time off to vote, but the employer may specify the work hours during which the employee may be absent from work for the purpose of voting.

Violation of Arizona's mandatory voting leave law is a class 2 misdemeanor, punishable by fines and/or imprisonment.

COLORADO

Colorado employers must grant employees up to two hours paid leave during normal polling hours (7:00 a.m. to 7:00 p.m.) for the purpose of voting if the following three conditions are satisfied:

- The employee is entitled to vote in the election;
- The employee requested a voting leave prior to the day of the election; and
- On Election Day, the employee's work hours are such that there are fewer than three hours between the opening and the closing of the polls when the employee is not required to be on the job.

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Assuming that these three conditions are met, the employee is entitled to paid time off to vote, but employers may specify the work hours during which the employee may be absent from work for the purpose of voting. However, at an employer's request, the employer must set the hours at the beginning or end of the work shift.

Violation of Colorado's mandatory voting leave law constitutes a misdemeanor punishable by fines and/or imprisonment. In addition, corporations violating this statute will forfeit their corporate charters as well as the right to do business in Colorado.

NEVADA

Nevada employers must permit an employee up to three paid hours to vote if the following three conditions are satisfied:

- The employee is registered to vote;
- The employee applied for voting leave prior to the day of the election; and
- It is "impracticable" for the employee to vote before or after his or her hours of employment.

Nevada employers may specify the hours when a qualified voting employee may be absent from work. However, Nevada law requires that employers provide employees "sufficient time" away from work to vote. The statute defines "sufficient time" as follows:

- One hour if the distance between the place of employment and the employee's polling place is two miles or shorter;
- Two hours if the distance between the place of employment and the employee's polling place is more than two miles but not more than ten miles; and
- Three hours if the distance between the place of employment and the employee's polling place is more than ten miles.

Violation of Nevada's mandatory voting leave law is a misdemeanor, punishable by fines and/or imprisonment.

If you have questions about these mandatory voting leave laws or similar laws in other states, please contact any of Fennemore Craig's labor and employment attorneys.

November 1, 2008 Deadline For Employers And Other Users Of Consumer Reports To Enact Policies Regarding Address Discrepancies In Consumer Reports

By Barney M. Holtzman and Sherry Janssen Downer

The Fair and Accurate Credit Transactions Act of 2003 ("FACTA"), amended the Fair Credit Report Act ("FCRA"), primarily to address consumer identity theft. The final Identity Theft Rules, published on November 9, 2007, impose duties: (1) on users of consumer reports regarding address discrepancies; (2) on financial institutions and creditors regarding the detection, prevention, and mitigation of identity theft (the "Red Flag Rule"); and (3) on debit or credit card issuers regarding changes of address. The deadline for compliance with the address discrepancies and change of address rules is November 1, 2008. The Federal Trade Commission recently extended the deadline to comply with the Red Flag Rule to May 1, 2009.

"Users" of "Consumer Reports" Include Employers Who Obtain Background Information About Applicants and Employees.

A user of a consumer report is not just someone who obtains a credit report but includes employers who obtain background reports or other information from third parties regarding job applicants or as part of an investigation.

- A consumer report is "any written, oral, or other communication of any information by a consumer reporting

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agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living” that may impact a person’s eligibility for credit, insurance, employment or any other purpose permissible under the FCRA. 15 U.S.C. § 1681a(d). There are certain exclusions.

- A consumer reporting agency (“CRA”) generally means a person or entity who “regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.” 15 U.S.C. § 1681a(f).

Users Duties Regarding Address Discrepancies.

Users are required to adopt reasonable policies and procedures that allow them to: (1) “form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report;” and (2) confirm and furnish an accurate consumer address to the CRA from which it received the notice of address discrepancy. Id. Examples include comparing the information in the consumer report with the information the user maintains in its own records or from third-party sources, or verifying the information in the consumer report with the consumer.

If a user receives notice from a CRA of a “substantial difference” between the address the user furnished and one in the report, it must:

- (1) Use its policies and procedures to form a reasonable belief that the report relates to the consumer about whom it has requested the report; and
- (2) Confirm the consumer’s correct address and furnish it to the CRA if the user:
 - (a) has formed a reasonable belief the report relates to the consumer about whom it was requested;
 - (b) has a continuing relationship with the consumer; and
 - (c) regularly and in the ordinary course of business furnishes information to the CRA.

16 C.F.R. § 681.1.

Even if you are not currently using consumer reports, you should consider adopting such policies now so that, should you decide to obtain and use a consumer report as part of a pre-employment background check or an employee investigation, you are in compliance with FACTA.

If you have any questions about the Identity Theft Rules or other obligations upon users of consumer reports, such as the FCRA’s disclosure, authorization and adverse action requirements, please contact any member of Fennemore Craig’s Labor and Employment Practice Group.



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