



HR News Alerts

EMPLOYEE VOTING GUIDELINES

Below are employee voting guidelines for your company.

Please contact an HR Business Partner at HR@eESI.com for assistance or more information.

OVERVIEW

Colorado and Texas are states that require pay for voting time; HOWEVER, if the employee has at least 2 hours to vote and does not cut into working hours, then an employer does NOT have to pay the voting leave, i.e. employee gets off of work at 5pm and polls close at 7pm, which provides the employee at least 2 hours to vote; no pay necessary. Also, if employee has sufficient time outside of their work schedule to vote, then employer does not need to provide time off during work hours. See provision below on voluntary overtime being excluded and mandatory overtime covered at regular rate of pay for voting leave.

Additionally, here is more guidance from TWC on Voting Leave:

Voting - Time Off

1. Assuming that an employee has not already voted in early voting, the employee is entitled to take paid time off for voting on election days, unless the employee has at least two consecutive hours to vote outside of the voter's working hours - see the following two provisions of [Chapter 276](#) of the Texas Election Code:

Texas Election Code, [Section 276.001](#). Retaliation Against Voter.

- a. A person commits an offense if, in retaliation against a voter who has voted for or against a candidate or measure or a voter who has refused to reveal how the voter voted, the person knowingly:
 1. harms or threatens to harm the voter by an unlawful act; or
 2. with respect to a voter over whom the person has authority in the scope of employment, subjects or threatens to subject the voter to a loss or reduction of wages or another benefit of employment.
- b. An offense under this section is a felony of the third degree.

Texas Election Code, [Section 276.004](#). Unlawfully Prohibiting Employee From Voting.

- c. A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly:
 1. refuses to permit the other person to be absent from work on election day for the purpose of attending the polls to vote; or
 2. subjects or threatens to subject the other person to a penalty for attending the polls on election day to vote.
 - d. It is an exception to the application of this section that the person's conduct occurs in connection with an election in which the polls are open on election day for voting for two consecutive hours outside of the voter's working hours.
 - e. In this section, "penalty" means a loss or reduction of wages or another benefit of employment.
 - f. An offense under this section is a Class C misdemeanor.
2. No Texas court cases address this statute. The following four Texas Attorney General opinions address the matters of time off to vote and pay for such time:

- a. [O-6242](#) (1944) - under a statute prescribing up to a \$500 fine for an employer who refuses time off for voting to an employee or who "subjects such employee to a penalty or deduction of wages because of the exercise of such privilege", an employee is entitled to a reasonable amount of time off from work in order to vote, and the employer can even prescribe what hours the employee will have off, as long as the time is reasonable and sufficient to allow the employee to vote, but the provision requiring the employer to pay the employee for the time so taken is unconstitutional. This latter holding was overruled by AG opinion V-1475 in 1952 - see below.
- b. [V-1475](#) (1952) - based upon a decision of the U.S. Supreme Court in *Day-Brite Lighting, Inc. v. State*, 72 S.Ct. 405 (1952), which affirmed a 1951 decision of the Missouri Supreme Court (*State v. Day-Brite Lighting, Inc.*, 240 S.W.2d 886), the Attorney General overruled in part the prior opinion in O-6242 by holding that the statute in question is a valid exercise of the state's police power, and it does not violate either the Texas or U.S. Constitutions to require an employer to pay employees for time taken off from work for the purpose of voting.
- c. [V-1532](#) (1952) - the same Attorney General clarified the ruling in V-1475 by holding, in agreement with O-6242, that the statute "does not require an employer to allow an employee time off to vote where the employee has sufficient time to vote outside his working hours", and that no deduction from wages exists in such a case, but that if the employee needs extra time off from his working hours in order to vote, such extra time must be paid.
- d. [M-53](#) (1967) - the statute "does not require an employee to be given time off to vote while working overtime hours that he had voluntarily requested. If the employer voluntarily permits such employee time off to attend the polls, during such overtime period, the employee is not entitled to be compensated for such time, either at his regular rate of pay or at the overtime rate."

3. Bottom-line considerations:

- a. Let employees have at least two hours off to vote on an election day (unless they have already voted under early voting procedures).
 - b. Such time off needs to be paid to the extent that it cuts into the employee's normal working hours (V-1532).
 - c. Such time off does not need to be paid if the two hours are available outside of normal working hours (V-1532).
 - d. If the time is taken off from mandatory overtime, the time off should be paid at the rate that would have applied to the time so missed (M-53).
 - e. If the time is taken off from optional overtime voluntarily requested by the employee, the time off does not need to be paid, since the time off would be outside of normal working hours and is time that the employee voluntarily chose to spend working rather than voting (M-53).
4. Attendance at state or local political conventions is job-protected leave, but such time off does not have to be paid -
 5. [Section 161.007\(b\)](#) of the Texas Election Code, with wording very similar to the [voting time provisions noted above](#), provides that "'penalty' means a loss or reduction of wages or other benefit of employment other than a deduction for the actual time of absence from work."
 - a. No written authorization is needed to not pay an hourly employee for time not worked while attending a political convention, but if unpaid convention leave is deducted from an employee's salary, such a deduction would need to be authorized by the employee in writing under the Texas Payday Law (see item 12 in the sample [wage deduction authorization agreement](#) in this book).
 - b. Deductions for unpaid convention leave from the salary of an exempt salaried employee would be more complicated - full days missed could be deducted on a pro rata basis, but not partial days, and any such deductions would have to be authorized by the employee in writing as noted immediately above - for details on the DOL regulations pertaining to deductions from an exempt employee's salary, see ["Salary Test for Exempt Employees"](#) in this book.
 - c. Deductions from available paid leave balances are allowed - see ["Salary Test for Exempt Employees"](#) in this book.