



THE WORKPLACE WORD

www.swlaw.com

October 2008

contacts

DENVER

Kati Miller Rothgery
303.634.2047
krothgery@swlaw.com

LAS VEGAS

Swen Prior
702.784.5262
sprior@swlaw.com

ORANGE COUNTY

Christy Joseph
714.427.7028
cjoseph@swlaw.com

PHOENIX

Kim Magyar
602.382.6266
kmagyar@swlaw.com

Josh Woodard

602.382.6281
jwoodard@swlaw.com

SALT LAKE CITY

Mark Morris
801.257.1904
mmorris@swlaw.com

TUCSON

Joseph Kroeger
520.882.1254
jkroeger@swlaw.com

DO EMPLOYERS NEED TO PROVIDE TIME OFF TO VOTE?

With the upcoming highly contested presidential election scheduled for Tuesday, November 4, 2008, it is likely that many employers will receive employee requests for time off to vote. While most employers will want to encourage their employees to be active participants in the democratic voting process, what is an employer's obligation to accommodate an employee's request for time off to vote?

There is no federal law that requires an employer to give an employee time off, paid or unpaid, to vote. However, most states DO have laws that require employers to provide their employees with time off to vote on Election Day.

ARIZONA

In Arizona, an employer must provide an employee with paid time off to vote if the polls are open less than three consecutive hours either before or after the employee's shift. In this situation, the employer must provide the employee with time off that, when added to the time difference between the start or end of the employee's regular work shift and the opening or closing of polls, would provide the employee a total of three consecutive hours within which to vote. The employee must request the time off to vote prior to the day of the election, and the employer may specify which hours the employee may be absent. *See Arizona Revised Statutes §16-402.*

CALIFORNIA

California employers are required to provide their employees with up to two hours of paid leave in order to vote, if sufficient time outside working hours is not available. The time off will be at the beginning or end of the regular work shift, whichever allows the most time for voting and the least time off from the regular work shift, unless otherwise mutually agreed. The employee must give at least two working days' notice that time off for voting is desired if the employee, on the third working day before the election, knows or has reason to believe that time off will be necessary to be able to vote on election day. The employer must conspicuously post in the workplace, not less than ten (10) days before the election, a notice that sets forth these forgoing provisions of California Election Code §14000, *et seq.*



A copy of this requisite notice is available, in both English and Spanish, at the Secretary of State's Web site, at: http://www.sos.ca.gov/elections/elections_tov.htm. Alternatively, posters of the notice may be ordered from the Elections Division at (916) 657-2166.

COLORADO

In Colorado, employers are required to provide their employees with two hours paid leave for the purpose of voting if there are less than three consecutive non-work hours between the opening and closing of the polls. The employee shall request the leave of absence prior to the day of the election, and the employer may specify the hours during which the employee may be absent, but the hours off shall be at the beginning or end of the work shift if the employee so requests. *See* Colorado Revised Statutes §§1-7-102, 1-13-111 and 1-13-719.

NEVADA

Nevada employers are required to provide a "sufficient" amount of paid time off for employees to vote if it is "impracticable" for the employee to vote before or after the employee's hours of employment. The question of "impracticability" is liberally construed to achieve the law's purpose of ensuring that employees have a sufficient opportunity to vote. The employee shall request leave to vote prior to the day of the election. An employee working two miles or less from the polling place must be allowed one hour to vote, an employee working more than two but less than ten miles from the polling place must be allowed two hours to vote, and an employee working more than ten miles from the polling place must be allowed three hours to vote. *See* Nevada Revised Statute 293.463.

UTAH

Utah employers must provide their employees with up to two hours of paid leave to vote, unless the employee has at least three or more non-working hours between the time polls open and close, during which the employee is not employed on the job. The employee must apply for a leave of absence before

the election day. The employer may specify the hours during which the employee may be absent from work; however, if the employee requests that the leave of absence occur at the beginning or end of the work shift, the employer shall grant that request. *See* Utah Code Ann. §20A-3-103.

CONCLUSION

Whether drafting policies or granting employee requests for time off to vote, employers must be cautious to ensure that they are complying with all relevant and applicable state laws and regulations.

For example, while most states' laws outline a specific minimum amount of time off that must be given to an employee to vote, employers should be wary about deducting salary or wages, or otherwise disciplining the employee, for any amount of time taken off in excess of this minimally required amount. Although clear abuses of voting leave may be the proper subject for discipline, most states prohibit penalizing or disciplining an employee (including deducting salary or wages) for taking time off to vote. This is true even in situations where the employee may not have requested time off of work ahead of time, but nevertheless, due to unexpectedly heavy voter turnout, arrives to work tardy on Election Day.

For questions regarding the content of this newsletter, please contact a Snell & Wilmer attorney.



Issues, Trends, & Developments: Staying Equipped in a Changing Workplace

In today's workplace environment, labor and employment issues are constantly evolving. Businesses need to be equipped with the latest information and resources in order to facilitate better business decisions and reduce the risk of litigation. Snell & Wilmer L.L.P. invites you to this three-part seminar series exploring some of the latest developments and trends impacting the industry, with a particular focus on the continually changing immigration landscape. If you are a business owner, manager, in-house counsel, or an HR professional, this program is a must-attend event.

Part I
The FLSA: What You Don't Know Could Hurt You.

Immigration Law: The Debate Continues.

October 29, 2008

Part II
Employee Discipline: A How-to-Guide for a Hot-Button Issue.

Immigration Law: Making Sense of the I-9 Form.

November 5, 2008

Part III
Election 2008: Prepare for Impact.

Immigration Law: Why are We Being Investigated?

December 3, 2008

Location: Snell & Wilmer L.L.P., One Arizona Center, 400 E. Van Buren, Phoenix, AZ 85004

Times: 7:30–8:00 AM Registration and Breakfast; 8:00–9:00 AM Program; 9:00–9:10 AM Break; 9:10–10:00 AM Program.

RSVP: rsvp@swlaw.com or 602.382.6599 by October 27, 2008

Parking: Validated parking located at 5th Street and Fillmore garage.

Snell & Wilmer
L.L.P.
LAW OFFICES
www.swlaw.com

Snell & Wilmer
L.L.P.
LAW OFFICES

Character comes through.®

DENVER LAS VEGAS LOS CABOS ORANGE COUNTY PHOENIX SALT LAKE CITY TUCSON

©2008 All rights reserved. The purpose of this newsletter is to provide our readers with information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The articles should not be considered legal advice or opinion, because their content may not apply to the specific facts of a particular matter. Please contact a Snell & Wilmer attorney with any questions.