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## EDWS

Elections often stir up passionate feelings—and that seems to be particularly true this year. As politicians and voters gear up for Tuesday, November 8, employers may not know that their workers have certain rights when it comes to elections, and ...

**Richard D. Alaniz** • Oct. 07, 2016



Elections often stir up passionate feelings—and that seems to be particularly true this year. As politicians and voters gear up for Tuesday, November 8, employers may not know that their workers have certain rights when it comes to elections, and corporations even have rights of their own.

Employers need to understand the obligations and restrictions regarding allowing employees time off to vote, whether they can encourage employees to vote for specific candidates, and even if they can ban politicking from the workplace. Failing to do so can result in workplace discord, and in some cases, even violations of law.

# Time Off to Vote

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may take up to two hours of paid time off at the beginning or end of their shift to cast their ballots, if they would otherwise not be able to vote because of their shift. Arkansas employers are required to schedule workers in a manner that ensures that employees have the opportunity to vote.

Penalties for failing to give employees voting time off as required by state law can range from nearly inconsequential to extremely significant. In Colorado, companies can lose their corporate charter. Under the Texas Election Code, it is a misdemeanor when someone who has authority over an employee “refuses to permit the other person to be absent from work on election day for the purpose of attending the polls to vote; or subjects or threatens to subject the other person to a penalty for attending the polls on election day to vote.”

Some states also require companies to alert workers about their voting rights. Under California Elections Code section 14001, employers must post a notice to employees advising them of provisions for taking paid leave for the purpose of voting in statewide elections. Postings must be done 10 days before a statewide election, and the posting must be in the workplace or where it can be seen by employees as they enter or exit the workplace.

## Retaliating Against Employees for Political Activity or Affiliation

In some states, there are no laws against companies that discriminate or fire employees for political affiliations or political activities. However, other states explicitly prohibit it, including California and New York. For example, in Michigan, it's a misdemeanor for a supervisor to “either directly or indirectly, discharge or threaten to discharge an employee . . . for the purpose of influencing the employee's vote at an election.”

The stakes are even higher in Florida, where it's a third-degree felony. According to

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## Political Displays at Work

When employees wear their politics on their sleeves—or on hats, by way of pins and buttons—it can lead to workplace distractions and even heated arguments.

Fortunately, companies generally have the right to prohibit political paraphernalia in the workplace, along with campaign signs and solicitations.

However, employers need to be careful that these policies don't violate any provisions of the National Labor Relations Act, which protects the rights of employees to engage in "concerted activity." Concerted activity occurs when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment. According to the National Labor Relations Board ("NLRB"), the agency that enforces federal labor law, a lone employee can also engage in protected concerted activity when acting on the authority of other employees, bringing group complaints to the employer's attention, trying to induce group action, or seeking to prepare for group action.

If an employee combines a union message with a political one, such as a button expressing a union's support of a particular candidate, the speech may be protected. If an employer tried to ban that button, it could find itself under investigation by the NLRB.

## Staying in Compliance

In order to maintain a professional work environment while also staying in compliance with all local, state, and federal laws, companies need to take a few basic steps:

- Know the Laws

Laws can vary significantly from jurisdiction to jurisdiction, and the penalties for

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it's important to consider what the goals are and the best way to accomplish those goals. This will help the company craft its communications and limit its communications to those employees it can legally solicit.

- Communicate with Workers

With the election looming, companies that are required to offer time off to employees should develop a policy that covers all logistics. The policy should explain what the company expects and whether employees need to communicate ahead of time if they plan to arrive late or leave early to vote. The policy should obviously be shared with all workers and supervisors, so there are no surprises on Election Day.

Voting is critical for democracy, which is why so many states have laws protecting employees' right to vote. By knowing the relevant laws, employers can remain in compliance for this election, as well as upcoming ones.

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