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EMPLOYER ALERT: New York Businesses Must Comply with NYS Election Law

With Election Day right around the corner, it is imperative that New York employers comply with the requirements under New York State Election Law. According to Section 3-110 of N.Y. Election Law, an employee who is a registered voter and does not have "sufficient time" to vote outside of his or her regularly scheduled hours may take "up to two hours" of paid time off without a deduction in accrued time. The law provides that an employee has "sufficient time" to vote if the polls are open for four consecutive hours either prior to or after an employee's shift. Therefore, if an employee works from 10 a.m. to 6:00 p.m. and polls are open at 6:00 a.m., such employee would not be entitled to leave as there is already sufficient time under the law to vote.

For those employees with less than four consecutive hours available to vote, the law provides that the employee is entitled to enough paid time off (up to a *maximum of two hours) that would, "when added to his or her voting time outside his or her working hours, enable him or her to vote." For instance, if the polls open at 6:00 a.m., and the employee's shift starts at 9:00 a.m., the employer must provide the employee, upon request, with paid leave so that he or she has enough time to cast a vote. Although an employee's leave may be less than two hours under certain circumstances, the N.Y. Board of Election's guidance states that this determination shall be made on a case-by-case basis. The guidance further notes that in making this determination, employers must consider "waiting times at polling places, traffic conditions, and other factors [that] may vary widely." Given the health and safety protocols that each polling place must implement during this year's election, such as social distancing, limited occupancy, and cleaning requirements, some voters can expect significant delays to in-person voting. As such, the variety of factors at play may make it more difficult for employers to properly assess the time needed to take off to vote.*

Employers are required to post a conspicuous notice in the workplace ten working days prior to Election Day. The Board of Elections has defined "working days" as the days in which an employer is operating and/or open for business. For employers that operate on a regular Monday-Friday schedule, the deadline to post the notice is today, **Tuesday, October 20, 2020 (this notice can be found here).**

KD IS HERE TO HELP

The experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to assist with any questions you may have regarding Election Law requirements.

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