

GIRVIN & FERLAZZO, P.C.

**20 Corporate Woods Blvd.
Albany, NY 12211
Phone (518) 462-0300**

UPDATE: Employees' Rights to Leave to Vote April 6, 2020

On April 3, 2020, Governor Cuomo signed a budget bill which, among other things, amended New York's election law providing workers time off to vote. The amendment takes effect immediately.

Under the previous version of New York Election Law § 3-110 (as amended in 2019), employers were required to provide New York employees who are registered voters with up to three hours of paid time off at the beginning or end of their shift to vote in any election – and employers had to provide this time off regardless of whether an employee had sufficient time outside of their work hours to vote.

The new version of the law partially restores its pre-2019 language, and once again allows employers to take into account the time an employee has available to vote outside of their work hours. The law defines “sufficient time” to vote as four consecutive hours. Employers only need to provide enough time off to give the employee a four-hour window, either at the beginning or end of their shift, in which to vote. The employer may designate whether the employee takes the time at the beginning or the end of their shift.

Thus, if the polls open at least four hours before an employee's shift begins or close at least four hours after the employee's shift ends, the employee is not entitled to any time off. An employee whose shift begins one hour after the polls open and ends two hours before the polls close would be entitled to either three hours off at the beginning of that shift, or two hours off at the end (at the employer's option), to create one four-hour window to vote.

The amendment reduces how much of this time off must be paid. Previously, employees were entitled to up to three hours of paid time off. Now, even though the total number of hours off may be higher for certain employees, only up to two hours of the time off must be paid. Thus, if the employee in the above example took three hours off at the beginning of her shift, two of those hours would be paid and one would be unpaid.

Employees who wish to take time off to vote must submit their request at least two (2), but not more than ten (10), working days prior to the election. A sample request form is provided with this memo.

Employers must post notice of these rights in conspicuous locations in the workplace for at least ten (10) working days before every election until the close of the polls. A sample notice is provided with this memo. You may also want to update your employee handbooks, voting leave policies, and election notices in light of this amendment.

As always, if you have specific questions, please feel free to contact us.