

New York State Voting Leave Rights

Section 3-110 of the New York State Election Law, which relates to providing employees in New York State time off to vote, was recently amended effective April 3, 2020.

Eligibility

Generally, New York State employees are eligible for up to two hours of paid time off to vote if they do not have “sufficient time to vote.” An employee is deemed to have “sufficient time to vote” if an employee has four consecutive hours to vote either from the opening of the polls to the beginning of their work shift, or four consecutive hours between the end of a working shift and the closing of the polls.

For example, if an employee is scheduled from 9 am to 5 pm, and the polls are opened from 6 am to 9 pm, the employee is **not** eligible for paid time off to vote, because the polls are open for four consecutive hours after the employee’s shift ends at 5 pm. However, if an employee is scheduled to work from 9 am to 6 pm, then the employee **is** eligible for paid time off to vote, because the employee only has three consecutive hours off in the beginning of their shift and end of their shift.

How much paid time off to vote are employees entitled to?

The Election Law provides for up to two hours of paid time off to enable an employee time to vote when added to their voting time outside their working hours. While two hours is the maximum paid time off allowed under the law, the amount of paid time off required for an employee to vote must be determined on a case-by-case basis as waiting times at polling places, traffic conditions, and other factors may vary wildly.

How many days in advance must an employee notify their employer of their intention to take paid time off to vote?

An employee must notify an employer at least two working days prior to their intention to take paid time off to vote, but not more than ten working days.

Does the notice requirement of two "working" days mean two "business" days?

Generally, yes. The statutory language calls for employees to give notice of their intent to take the time off two "working days" prior to the election. "Working day" is not defined in the Election Law, nor is it defined in the General Construction Law. It has been held that "working days" means "days as they succeed each other, exclusive of Sundays and holidays." *Pedersen v Eugster*, 14 F 422, 422 (ED La 1882); see also 1915, Op.Atty. Gen. 139. However, it has also been recognized, in contract cases, that there is no

general rule with respect to the term "working days," since the term varies in different occupations, and hence, it should be determined in light of the circumstances of the particular case. See *F.J. Mumm Contr. Co. v Vil. of Kenmore*, 104 Misc 268, 268 (Erie Sup Ct 1918). As such, it is the general opinion of the Board that "working days" is determined in light of each individual employer. In other words, "working days" means any day that the employer is operating and/or open for business.

Can an employer require an employee to use their "personal time off" to vote to comply with § 3-110 of the Election Law?

No. Employees cannot be required to utilize any other form of earned leave time to vote.

What remedies are available to employees that are not provided with paid time off to vote?

Employees are encouraged to first speak with their employer to inform them of the requirements of the Election Law. If the employer fails or otherwise refuses to provide the employee with paid time off to vote, the employee may wish to speak with a private attorney and/or contact the following entities:

For Wage Payment Purposes:

New York State Department of Labor
Division of Labor Standards
Bldg. 12, Rm. 185C,
State Office Campus, Albany NY 12240
Tel. 888-4-NYSDOL (469-7365)

New York State Attorney General's Office Labor Bureau
28 Liberty Street
New York, NY 10005
Tel. (212) 416-8700

For Election Law Compliance Purposes:

Contact your [County Board of Elections](#)

NYS Board of Elections
40 North Pearl St, Suite 5
Albany, NY 12207-2729
Tel. (518) 474-6220
INFO@elections.ny.gov