



# Employers Note the Vote: New York State Expands Employee Entitlements to Time Off to Vote in Elections

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Employers should be aware that the State of New York recently amended section 3-110 of the Election Law to expand the obligation to provide all employees (those registered to vote) paid time off to vote in all elections.

New York has had a law on this topic for over 100 years. Since 1976, the law has required employers to provide employees time off to vote without a loss of pay (up to two hours) if the employees did not have “sufficient time to vote outside of working hours”. If employees had four consecutive hours either between the opening of the polls and the beginning of a working shift, or between the end of a working shift and the closing of the polls, the employee was deemed to have sufficient time to vote. Since the polls in New York are generally open from 6 AM to 9 PM on election day, most employees had “sufficient time” to vote under the old law.

However, in April 2019, the law was changed. Under the new law, employees no longer need to show any inability to vote outside of working hours. Instead, all employees may take time off to vote without a loss of pay (increased to three hours).

As was the case under the old law, the time off must be taken at the beginning or end of the employee’s shift, in the discretion of management. (Management is free to agree to other hours but is not required to do so.)

Additionally, as under the old law, every employer is required to post a notice of these rights at least 10 days prior to every election. Employees who wish to request time off to vote must make such a request at least 2 days prior to election day. A copy of the new law as well as the recommended notice to employees can be found at <https://www.elections.ny.gov/NYSBOE/elections/AttentionEmployees.pdf>.

The law requires employees to be paid for such time off (up to 3 hours), but does not address whether the employer may charge such time off to an employee’s available leave bank (i.e. vacation or personal time).

The law fails to address a number of issues. For example: the law is silent on whether an employer may require proof that an employee actually voted. Are part-time employees eligible for paid time off? What about employees who work primarily at night, but whose shift may partially overlap with the 15 hours that polls are open?

Finally, note that the law applies to all elections. That would include national, state, village, county, and school district elections, for example. Primary elections are also covered.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of employment law, please contact Thomas B. Wassel at (516) 357-3868 or [twassel@cullenanddykman.com](mailto:twassel@cullenanddykman.com), or Gary Fishberg at (516) 357-3703 or [gfishberg@cullenanddykman.com](mailto:gfishberg@cullenanddykman.com).

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