

Voting and the law of the California workplace

By Dan Eaton

October 26, 2020 | 6:00 AM

The 2020 election season will soon end. A record number of Californians are expected to vote by mail; many already have.

How do employers deal with their employees who have yet to vote but will in the days ahead?

Under the state's Voter Protection Act effective since Jan. 1, an employer may not ask or require an employee to bring their vote by mail ballot to the workplace or to cast their mail ballot at the workplace. Doing so subjects an employer to a \$10,000 civil fine — so no voting conclaves in a socially distanced conference room. That law expressly does not prohibit employers from encouraging their employees to vote.



Gavel(Ingram Publishing / Getty Images/Ingram Publishing)

The question was raised as the measure was being considered whether the Voter Protection Act addressed a genuine problem; there was no evidence any employers were making such requests. According to a Senate committee report, the bill's sponsor cited news items about employers "increasingly pressuring their employees to support their favored political candidates and causes."

Employers, then, should be careful how they encourage their employees to vote. While employers may share their views with employees about candidates and ballot measures, California law prohibits threatening to fire any employee for adopting or refusing to adopt "any particular course or line of political action or political activity." California law also prohibits anyone from giving a voter anything of value for voting, or refraining from voting, for a particular candidate or measure. Federal law is broader, making it a crime to give or receive payment for the act of voting in an election in which a candidate for federal office, such as president, is on the ballot.

California law entitles employees to up to two hours of paid time off at the beginning or end of their normal shift "[i]f a voter does not have sufficient time outside of working hours to vote at a statewide election." Employers must conspicuously post a notice in the workplace of that leave right at least ten days before the election. (If you haven't done it yet, go to the Secretary of State's website, download the poster, and post it now.) If the employee knows or should know three workdays before the election that time off "will be necessary" to vote on election day, the employee must give the employer two working days' notice that he wishes paid voting leave.

Note that the employee's right to paid time off to vote must be a matter of necessity, not mere preference. The Secretary of State tells employers: "Employees are eligible for paid time off for the purpose of voting only if they do not have sufficient time outside of working hours to vote. The intent of the law is to provide an opportunity to vote for workers who would not be able to do so because of their jobs."

It may be hard for an employee to make that showing given Gov. Gavin Newsom's May order that every voter be mailed a ballot to cast when and where it is convenient for the voter to do so. Even in-person voting is not restricted to a single day or even a single week.

It is in the act of voting that this piece of wisdom from the great U.S. Supreme Court Justice Louis D. Brandeis finds its fullest expression: “The most important political office is that of the private citizen.” The importance of the right to vote is reflected in law’s multifaceted protection of it.

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