



## Labor & Employment Law News

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### New York's Election Leave Law

#### What does this statute allow?

Under New York's Election Law § 3-110, registered voters who do not have sufficient time outside their working hours to vote may take off as much working time as they need for that purpose.

#### What is the purpose of the law?

The law is intended to prevent workers from being deprived of their right to vote due to economic necessity and to induce them to vote by giving them the opportunity to do so.

#### Is there a criminal penalty for refusing to permit employees to vote?

Yes. Under Election Law § 17-118, a person or corporation who refuses to let a worker vote or subjects the worker to a penalty or reduction of wages for voting is guilty of a misdemeanor.

#### Does the law allow a civil cause of action by a worker?

No, there does not appear to be a civil penalty attached to the statute.

#### What does "sufficient time" outside of working hours mean?

Employees are deemed to have sufficient time to vote outside of working hours if they have four or more consecutive hours between either the opening of the polls and the beginning of their shift, or the end of their shift and the closing of the polls. Workers with sufficient time to vote outside of working hours are not eligible under the statute to take time off from work to vote.

#### Will employees be paid for the time they take off from work to vote?

Eligible employees may take up to two hours off from work without loss of pay.

#### Does it matter how the employee is paid?

No. The statute applies to all employees, whether they are paid weekly, daily, hourly, by piece work, etc.

#### Can an employer grant additional paid time off to employees to vote?

Yes. The law only requires two hours of paid time off to vote but nothing in the statute prevents an employer from granting additional paid time.

#### What notice must an employee give the employer of an intent to take time off to vote?

An employee requiring time off to vote must inform the employer no more than ten and no fewer than two working days in advance.

#### Does the law include posting requirements?

Yes. The statute requires employers to post a notice detailing its provisions in a common area of the workplace so it can be seen by employees either coming to or leaving work. A sample poster can be found at [www.hancocklaw.com/news/posters.cfm](http://www.hancocklaw.com/news/posters.cfm).

#### When must the notice be posted?

The notice must be posted at least ten days before every election and must stay posted through the closing of polls on election day. However, it is advisable to keep the notice posted at all times throughout the year.

#### Is this statute applicable to general elections only?

No. The law pertains to any election, including federal, state, and local elections, special elections proclaimed by the Governor, and primary elections.

#### Does the law require employers to modify their employee handbook in any manner?

No, but employers may wish to consider adding a provision to the handbook that accurately describes the law.

#### Is other information about New York's Election Law available?

Yes, additional information can be found at the New York State Board of Elections website: <http://www.elections.state.ny.us>.

## New York State Criminalizes Labor Trafficking

New York has enacted a bill banning human trafficking in New York State. The statute, Penal Law § 135.35, prohibits both sex and labor trafficking. The new crime of labor trafficking is defined in the statute as the act of forcing, threatening or otherwise compelling a person to engage in labor.

The law prohibits a wide range of activities aimed at compelling or inducing another person to enter into or remain in employment. In addition to prohibiting the use or threat of force against persons to compel them to work, the law makes it illegal to give a person a controlled substance with the intent to impair that person's judgment. An employer may not use a real or purported debt to force a person to work or use threats to coerce another person into working. The law makes it illegal to threaten to accuse another of crimes, expose a secret, or use a position of public authority to compel a person to work. It is also impermissible to withhold, destroy or confiscate a person's immigration papers or passport as part of a scheme to impair that person's freedom of movement and force the person to work. This provision does not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state or federal agency requirement.

Finally, the law includes a general provision that makes it a crime to threaten a person by conduct that would constitute either a felony or the crime of unlawful imprisonment in the second degree, a class A misdemeanor. The law, which goes into effect November 1, 2007, will be classified as a non-violent, class D felony.

## Amendment to Labor Law Calls for Workplace Benefits to Nursing Mothers

On August 22, Governor Eliot Spitzer signed into law a bill that provides statutory protection to breastfeeding mothers. The bill requires employers to provide reasonable unpaid break time each day to allow employees to express breast milk for a nursing child for up to three years following childbirth. Employers may permit employees to use paid breaks or meal times each day for the same purpose.

Under the law, an employer must make reasonable efforts to provide a private location or room near the work area where a nursing mother can express milk. The law, which is codified at Labor Law § 206-c and is effective immediately, contains a provision prohibiting discrimination against employees who take advantage of its protection. However, this law does not define how many or how long a break must be provided, and whether the break is in addition to the breaks given for other reasons. Also, federal law generally mandates that breaks of less than 20 minutes be paid for overtime eligible employees. Therefore, in certain cases, the United States Department of Labor may mandate that the break period be paid. For more information about federal law and the payment of break periods, please consult the following website: <http://www.dol.gov/dol/topic/workhours/breaks.htm>.

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