



Personnel Policy Bulletin No.: 8/89 Date: 10-31-89
Regulation Reference No.: 6.1.1 - Attendance
Index Reference: Time Allowed Employees To Vote

Background

Section 3-110 of the current New York State Election Law sets forth the conditions under which employees who are registered voters may take time off from their jobs to vote. The provisions of this section are summarized below; a copy of Section 3-110 is attached hereto.

Policy

1. Unless an employee has an unusual work schedule, the employee should not require any extra time off to vote.
2. If an employee has four consecutive hours either before work or after work during the time the polls are open, the employee shall be deemed to have sufficient time to vote. If the employee has less than four consecutive hours, the employee may take as much time as is necessary to vote, but only two hours of this time shall be excused time.
3. If an employee who is a registered voter does not have sufficient time outside of working hours to vote, the employee may take up to two hours without charge to leave balances to vote.
4. Time off for voting shall be allowed only at the beginning or end of the work shift, as the College Personnel Officer may designate, unless otherwise mutually agreed upon.

Procedure

1. An employee requiring time off to vote shall notify the College Personnel Officer in writing, not more than ten nor less than two working days before the day of the election.
2. Every college shall post a notice setting forth the provisions of Section 3-110 of the current New York State Election Law at least ten working days before every election.

attachment: New York State Election Law
Section 3-110

APPROVED

University Personnel Director
10-31-89

§ 3-110. Time allowed employees to vote

1. If a registered voter does not have sufficient time outside of his working hours, within which to vote at any election, he may, without loss of pay for up to two hours, take off so much working time as will, when added to his voting time outside his working hours, enable him to vote.

2. If an employee has four consecutive hours either between the opening of the polls and the beginning of his working shift, or between the end of his working shift and the closing of the polls, he shall be deemed to have sufficient time outside his working hours within which to vote. If he has less than four consecutive hours he may take off so much working time as will when added to his voting time outside his working hours enable him to vote, but not more than two hours of which shall be without loss of pay, provided that he shall be allowed time off for voting only at the beginning or end of his working shift, as the employer may designate, unless otherwise mutually agreed.

3. If the employee requires working time off to vote he shall notify his employer not more than ten nor less than two working days before the day of the election that he requires time off to vote in accordance with the provisions of this section.

4. Not less than ten working days before every election, every employer shall post conspicuously in the place of work where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of this section. Such notice shall be kept posted until the close of the polls on election day.

L.1976, c. 233, § 1, formerly § 3-114; renumbered § 3-110, L.1976, c. 234, § 7.

Historical Note

Derivation. Election Law of 1949, c. 100, (§ 226), added L.1960, c. 793, § 1. A prior § 226 was repealed by L. 1960, c. 793, § 1. Election Law of 1922, c. 588, (§ 200).
 Election Law of 1909, c. 22, (§ 365).
 Former section 3-110. Renumbered 7-201.

Cross References

Duress and intimidation of voters, see section 17-150.
 Refusal to permit employees to attend election, see section 17-118.

Library References

Elections ⇐319.

C.J.S. Elections § 330.

Employees to vote

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1. Constitutionality

Measures to insure full and free exercise of elective franchise are in the interest of the general welfare, and therefore within the proper scope of state's police power. *People v. Ford Motor Co.*, 1040, 271 App.Div. 141, 63 N.Y.S.2d 607.

2. Purpose

Purpose of section 226 of the former Election Law of 1949 was to eliminate any penalty for exercising right of suffrage and remove a practical obstacle to getting out the vote. *Williams v. Aircooled Motors*, 1954, 307 N.Y. 332, 121 N.E.2d 251, appeal dismissed 75 S.Ct. 438, 348 U.S. 946, 99 L.Ed. 740, rehearing denied 75 S. Ct. 578, 349 U.S. 907, 99 L.Ed. 1243.

Purpose of section 226 of the former Election Law of 1949 was to encourage voting by making it financially immaterial to voter whether he works or takes time off to vote. *Williams v. Aircooled Motors*, 1953, 283 App.Div. 187, 127 N.Y.S.2d 135, affirmed 307 N.Y. 332, 121 N.E.2d 251, reargument denied 307 N.Y. 841, 122 N.E.2d 333, appeal dismissed 75 S.Ct. 438, 348 U.S. 946, 99 L.Ed. 740, rehearing denied 75 S.Ct. 578, 349 U. S. 907, 99 L.Ed. 1243.

Object of section 226 of the former Election Law of 1949 was to prevent workers from being deprived of their votes by economic necessity, and to induce workers to vote by holding out opportunity of doing so on employer's time. *Nikolaus v. Pandiek Press, Inc.*, 1959, 22 Misc.2d 908, 194 N.Y.S.2d 381.

3. Elections within section

Section 226 of the former Election Law of 1949 was applicable to incor-

porated village election. *Horner v. General Motors Corp.*, 1955, 138 N.Y. S.2d 799.

4. Employees within section

Where union contract made election day a full-paid holiday for two-thirds of employees, and made the day following a full-paid holiday for remaining third, employees in latter group, whose working hours coincided with only 2½ of the 13 hours during which the polls were open, but who chose to vote during such working hours, were not within section 226 of the former Election Law of 1949. *Nikolaus v. Pandiek Press, Inc.*, 1959, 22 Misc.2d 908, 194 N.Y.S. 2d 381.

Section 226 of the former Election Law of 1949 applied equally to weekly, daily, hourly or piece work wage earners. *Lee v. Ideal Roller & Mfg. Co.*, 1949, 197 Misc. 389, 92 N.Y.S.2d 726.

5. Notice to employer

An employee who was entitled to vote at the 1936 general election was entitled to absent himself for the period prescribed under section 200 of the former Election Law of 1922 while the polls of the election were open, and, if he complied with the provisions of such section in relation to giving notice to his employer he was entitled to pay for the time when he was so absent. 1936, Op. Atty.Gen. 290.

6. Amount of time off allowed

Employee does not have absolute right to time off from work to vote, but is entitled to take off only so much working time as will, when added to his voting time outside his working hours, enable him to vote. *General Elec. Co. v. Lefkowitz*, 1962, 16 A.D.2d 549, 229 N.Y.S.2d 640, affirmed 12 N.Y.2d 730, 233 N.Y.S.2d 937, 186 N.E.2d 197.

An employee may absent himself from his work for a period of two hours in order to vote at a general election and no deduction from his

wages may be made by reason thereof, even though the polls are open for a period of two hours outside of his regular employment period. 1924. Op. Atty. Gen. 159.

7. Compensation rights

Where, under union contract requiring additional compensation for hours in excess of eight worked in one day, employee regularly received \$17.10 for nine hour day, and employer, as required by section 226 of the former Election Law of 1940 excused employee to vote on election day after he had worked seven hours, employer was required to pay employee his usual wage of \$17.10 for the day's work and could not satisfy the provisions of such section by paying only \$16.20 in accordance with basic hourly straight time of \$1.80. *Williams v. Aircooled Motors*, 1954, 307 N.Y. 332, 121 N.E.2d 231, appeal dismissed 75 S.Ct. 438, 348 U.S. 946, 99 L.Ed. 740, rehearing denied 75 S.Ct. 578, 349 U.S. 907, 99 L.Ed. 1243.

Employee does not have absolute right to time off from work to vote, but is entitled to take off only so much working time as will, when added to his voting time outside his working hours, enable him to vote and he is entitled to be paid for not more than two of such hours. *General Elec. Co. v. Lefkowitz*, 1962, 16 A.D.2d 549, 229 N.Y.S.2d 640, affirmed 12 N.Y.2d 730, 233 N.Y.S.2d 937, 186 N.E.2d 197.

Employee, who required only 1½ hours to enable her to vote and whose shift ended 3¼ hours before polls closed, was not entitled to be paid for hour of work she took off to vote. *Id.*

The provisions of section 226 of the former Election Law of 1940 could be considered on question of employees' deprivation of extra overtime wages by employer's failure to count such time in computing number of hours worked during regular 40-hour work week, though there was no such thing as additional overtime compensation when such section was first enacted. *Lee v. Ideal Roller & Mfg. Co.*, 1949, 197 Misc. 380, 92 N.Y.S.2d 731.

An employer, failing to count two hours voting time, for which section 226 of the former Election Law of 1940 allowed employees to be absent from employment on election day, in computing hours worked by them during regular 40-hour work week including such day for purposes of extra overtime wage payments, violated such section and labor union contract providing for such payments, so as to entitle employees to recover two hours additional overtime wages from employer. *Id.*

An employee is entitled to two hours absence from work in order to vote without pay being deducted, but if he is absent the entire day, there is no law preventing his being docked. Op. Atty. Gen., 1933, 49 St. Dept. 164.

§§ 3-112, 3-114. Renumbered §§ 7-202, 3-110