SPONSOR: Rep. Morrison & Rep. Bentz & Rep. Wilson-Anton & Sen. Gay
Reps. Baumbach, Kowalko, Lambert, S. Moore; Sens. S. McBride, Pinkney

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 225

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO PAID TIME OFF TO VOTE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by adding a new Chapter 12 by making insertions as shown by underline as follows:

CHAPTER 12. Paid Time Off to Vote.

§ 1201. Purpose.

The Constitution of the State provides that all elections shall be free and equal. To that end, the full exercise of the right to vote requires that citizens who are qualified to vote be afforded the opportunity to do so without losing pay. It is the purpose of this chapter to ensure that persons employed in Delaware who are qualified to vote in Delaware elections be given time off with pay to exercise their right to vote.

§ 1202. Definitions.

As used in this chapter:

(1) "Department" means the Department of Labor or its authorized representatives.

(2) "Election" means any municipal, county, state, or federal general election, political primary election, or public school election as defined by Title 14, held in this State.

(3) "Employ" means to suffer or permit to work by an employer under a contract of employment either made in this State or to be performed wholly or partly in this State.

(4) "Employee" includes any individual employed by an employer but shall not include:

a. Any individual employed in agriculture.

b. Any individual employed in domestic service in or about a private home.

c. Any individual employed in a bona fide executive, administrative or professional capacity, or as an outside commission paid salesperson, or route driver, who customarily performs services away from the individual's employer's premises taking orders for goods or services.

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d. Any individual employed by the United States government, the State or any political subdivision of the State.

e. Any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employment relationship does not in fact exist or where the services are rendered to such organization gratuitously.

f. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to or in conjunction with fishing operations, including the going to and returning from work and loading and unloading when performed by an employee.

g. Any individual under the age of 18 participating in and employed as a junior counselor or counselor in training (CIT) by a nonprofit organization in a summer camp program.

h. Any inmate in the custody of the Department of Correction and any inmate on work release who participates in the Prison Industries programs or other programs sponsored for inmates by the Department of Correction pursuant to Chapter 65 of Title 11 or other applicable Delaware law, unless the inmate is employed by an employer other than the State or a political subdivision of the State.

i. Any person who is party to a collective bargaining agreement with an employer.

(5) "Employer" means any individual, partnership, association, corporation, statutory trust, business trust, entity, administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any person or entity, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by the regulations of the Department under Chapter 11 of this title.

§1203. Paid time off to vote.

(a) An employer must provide 2 hours of paid time off to any employee who is registered or qualified to vote, for the purpose of voting in an election in the State if the employee is scheduled to work at least 8 hours on the day of the election. Pay for leave to vote shall be at the employee's regular wage rate.

(b) The employer may specify the hours on the day of the election during which the employee may take paid time off for voting, so long as the specified time falls within the time the employee is scheduled to work. The employer may specify the employee take paid time off to vote at the beginning or at the end of the employee's shift but may not designate a lunch or other break as the specified time off for the employee to exercise the right to vote.

(c) An employee who wishes paid time off to vote shall notify the employer not less than 2 working days before the day of an election of the request for paid time off. If the employer does not specify the hours the employee will be given for paid time off to vote, the employee shall make a reasonable effort to schedule paid time off to vote in a manner that does not unduly disrupt the operations of the employer.

(d) If the employee must take more than 2 hours to get to the polling place from work, vote, and return to work due to circumstances beyond the employee's control, the employer must permit the employee to use any accrued paid leave to cover the excess time away from work.

(e) Not less than 10 working days before every election, an employer shall display written notice in a conspicuous location in the work place of the provisions contained in §1203(a), (b), (c) and (d) of this chapter. The notice must remain posted until the polls close on the day of the election to which the notice pertains.

(f) An employer may not take any adverse action against an employee who exercises the right to take paid time off to vote.

§ 1204. Enforcement.

(a) The Department shall administer and enforce this chapter.

(b) The Department shall have the power to make and revise or rescind regulations it deems necessary or appropriate to administer or enforce this chapter.

§ 1205. Penalties.

(a) Any employer who violates or fails to comply with any requirement of this chapter shall be subject to a civil penalty of not less than $500 nor more than $1,000 for each violation.

(b) Any employer who discharges or in any manner discriminates against an employee because the employee has made a complaint or has given information to the Department related to requirements of this chapter shall be subject to a civil penalty of not less than $1,000 nor more than $5000.

Section 2. Amend Chapter 51 of Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5125, Public employees' paid leave to vote.

(a) For purposes of this chapter:

(1) "Election" means any municipal, county, state, or federal general election, political primary election, or public school election as defined by Title 14, held in this State.

(3) "Public Employer" means the State, any school district or charter school board, any county of the State, or any agency of a county, or any municipal corporation, municipality, city or town located within the State.

(4) "Public Employee" means any employee of a public employer.

(5) "Wage" means compensation due to public employee by reason of the employee's employment, payable in legal tender of the United States or check or bank convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by the regulations of the Department of Labor under Chapter 11 of Title 19.

(b) Any public employee who is not a party to a collective bargaining agreement and is scheduled to work for at least 8 hours on the day of an election is entitled to 2 hours of paid leave for the purpose of voting. Pay for leave to vote shall be at the public employee's regular wage rate.

(c) The public employer may specify the hours on the day of the election during which the public employee may take paid time off for voting, so long as the specified time falls within the time the public employee is scheduled to work. The public employer may specify the public employee take paid time off to vote at the beginning or at the end of the employee's shift but may not designate a lunch or other break as the specified time off for the public employee to exercise the right to vote.

(d) A public employee who wishes paid time off to vote shall notify the public employer not less than 2 working days before the day of an election of the request for paid time off. If the public employer does not specify the hours the employee will be given for paid time off to vote, the public employee shall make a reasonable effort to schedule paid time off to vote in a manner that does not unduly disrupt the operations of the public employer.

(e) If the public employee must take more than 2 hours to get to the polling place from work, vote, and return to work due to circumstances beyond the employee's control, the public employer must permit the employee to use any accrued paid leave to cover the excess time away from work.

(f) Not less than 10 working days before every election, a public employer shall display written notice in a conspicuous location in the work place of the provisions contained in §5125 (b), (c), (d) and (e) of this chapter. The notice must remain posted until the polls close on the day of the election to which the notice pertains.

(g) A public employer may not take any adverse action against a public employee who exercises the right to take paid time off to vote.

(h) A public employee who alleges an adverse action against the public employee by the public employer may bring a civil action for actual damages within 90 days after the occurrence of the alleged violation of the prohibition in § 5125(g).

Section 3. Section 1 of this Act takes effect upon promulgation of regulations adopted under Chapter 12 of Title 19, or 6 months after enactment, whichever occurs first.

SYNOPSIS

This Act requires private and public employers in the State to give any employee who is scheduled to work at least 8 hours on an election day 2 hours of paid leave in order for the employee to exercise the right to vote. The Act excludes employees working for the federal government as well as any private or public employee who is party to a collective bargaining agreement. Employees must give employers 2 working days' notice in advance of an election that the employee intends to use paid leave to vote. Employers must post notice of the rights created in the Act. For private sector employees, enforcement of the Act is through the Department of Labor; private sector employers who violate the Act will be subject to a civil penalty of a minimum of $500 and maximum of $1,000. A private employer who discriminates against an employee for exercising the rights created by the Act is liable for a civil penalty of $1,000 to $5,000. A public employee is entitle to bring an action for actual damages if the public employer takes an adverse action against the employee for exercising the right to paid leave to vote.