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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 288

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYER 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. EMPLOYER PAID LEAVE

SUBCHAPTER I. EMPLOYER 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 subchapter:

(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" means an individual employed by an employer but shall not include:

a. 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.

b. Any individual who is covered by a valid collective bargaining agreement with an employer to the extent that paid time off to vote is expressly waived in the collective bargaining agreement in clear and unambiguous terms.

(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.

(7) “Retaliation” includes any threat, discharge, discipline, suspension, demotion, non-promotion, less favorable scheduling, reduction of hours or application of absence control policies that count an employee’s use of paid time off to vote as absence that may lead to adverse action, or other adverse action against employees for the exercise of a right guaranteed pursuant to this chapter, including sanctions against an employee who is a recipient of benefits or rights pursuant to this subchapter. “Retaliation” also includes interference with or punishment for participating in an investigation, proceeding or hearing pursuant to this subchapter.

§1203. Paid time off to vote.

(a) An employer must provide 2 hours of paid time off to an employee 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. An employer may not require an employee to provide proof of being registered or qualified to vote. Pay for leave to vote shall be at the employee’s regular wage rate or the full state minimum wage if higher, and with the same benefits, including healthcare benefits, as the employee normally earns during hours worked and provided to an employee. An employer shall not require an employee to exhaust any other paid leave before the employee uses 2 hours of paid time off to vote.

(b) The employer may specify the hours on the day of the election during which the employee may take paid time off for voting, as long as the specified time falls within the time the employee is scheduled to work. The employer may specify the employee take 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 has a request for 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

51 be given for paid time to vote, the employee shall make a reasonable effort to schedule time off to vote in a manner that
52 does not unduly disrupt the operations of the employer.

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

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

59 (f) An employer may not engage in retaliation against an employee who exercises the right to take paid time off to
60 vote.

61 (g) An employer's failure to provide paid time off to vote based on the employer's misclassification of the
62 employee as an independent contractor is a violation of this subchapter.

63 § 1204. Enforcement and Remedies.

64 (a) The Department shall administer and enforce this subchapter by:

65 (1) Establishing a system to receive complaints, in writing, by telephone, and online, regarding alleged
66 violations of this subchapter.

67 (2) Establishing a process for investigating and resolving complaints in a timely manner and keeping
68 complainants notified regarding the status of the investigation of their complaint.

69 (3) Ensuring employer compliance with this subchapter through the use of audits, investigations, record
70 keeping requirements or other measures.

71 (4) Establishing a system for reviewing complaints.

72 (b) The Department shall keep confidential the identity of complainants unless disclosure is necessary for
73 resolution of the investigation or required by law. The Department shall notify a complainant that the Department will be
74 disclosing the complainant's identity prior to such disclosure and to the extent practicable.

75 (c) The Department shall have the power to make, revise and rescind regulations it deems necessary to administer
76 and enforce this subchapter.

77 (d) Any individual or persons may file a civil action for an alleged violation of this subchapter without first filing
78 an administrative complaint with the Department. In the event of an investigation by the Department the time period to file
79 a civil action against an employer shall be tolled pending the conclusion of the same employer by the Department. A lack of
80 investigation by the Department shall not act as a bar to a civil action against the employer. A plaintiff in a civil action,

brought under this subchapter, may seek both equitable and legal relief. A plaintiff prevailing in a legal action, brought under this subchapter, shall be entitled to recover the costs and expenses of the lawsuit including reasonable attorney's fees.

§1205. Penalties.

(a) Any employer who violates or fails to comply with any requirement of this subchapter shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each violation. In addition the employer shall be assessed actual damages incurred by the employee for lost wages or lost benefits as well as any equitable relief, such as reinstatement, of the employee.

(b) Any employer who discharges or in any manner engages in retaliation against an employee because the employee has made a complaint or has given information to the Department related to an alleged violation of this subchapter by an employer shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000. In addition the employer shall be assessed actual damages incurred by the employee for lost wages or lost benefits as well as any equitable relief, such as reinstatement, of the employee.

§1206. Short title.

This subchapter shall be known as the "Paid Time Off To Vote Act".

Section 2. This Act takes effect upon promulgation of regulations adopted under this subchapter 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 individuals engaged in activities for education, charitable, religious, or nonprofit organizations when the employment relationship does not exist or where services are rendered to such organizations gratuitously; employees who are party to a collective bargaining agreement in which paid time off to vote has been waived. Employees must give employers 2 working days notice in advance of an election that the employee intends to use paid time off to vote. Employers must post notice of the rights created in the Act. Enforcement of the Act is through the Department of Labor. Employers who violate the Act are subject to civil penalties ranging from \$500-\$1,000 and from \$1,000-\$5,000 if found to have retaliated against an employee for exercising the rights created by this Act. Employees may bring a civil lawsuit for equitable relief and monetary damages. A prevailing employee may also recover costs and attorney's fees.