

New York State Election Law
(As amended by Chapter 56 of the Laws of 2020)

§ 3-110. Time allowed employees to vote. 1. If a registered voter does not have sufficient time outside of his or her scheduled working hours, within which to vote on any day at which he or she may vote, at any election, he or she may, without loss of pay for up to two hours, take off so much working time as will, when added to his or her voting time outside his or her working hours, enable him or her to vote.

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

3. If the employee requires working time off to vote the employee shall notify his or her employer not more than ten nor less than two working days before the day of the election that he or she 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.

ATTENTION ALL EMPLOYEES
TIME ALLOWED EMPLOYEES TO VOTE ON ELECTION DAY
N.Y. ELECTION LAW SECTION 3-110¹ STATES THAT:

- **IF YOU DO NOT HAVE 4 CONSECUTIVE HOURS TO VOTE, EITHER FROM THE OPENING OF THE POLLS TO THE BEGINNING OF YOUR WORKING SHIFT, OR BETWEEN THE END OF YOUR WORKING SHIFT AND THE CLOSING OF THE POLLS, YOU MAY TAKE OFF UP TO 2 HOURS, WITHOUT LOSS OF PAY, TO ALLOW YOU TIME TO VOTE IF YOU ARE A REGISTERED VOTER.**

- **YOU MAY TAKE TIME OFF AT THE BEGINNING OR END OF YOUR WORKING SHIFT, AS YOUR EMPLOYER MAY DESIGNATE, UNLESS OTHERWISE MUTUALLY AGREED.**

- **YOU MUST NOTIFY YOUR EMPLOYER NOT LESS THAN 2 DAYS, BUT NOT MORE THAN 10 DAYS, BEFORE THE DAY OF THE ELECTION THAT YOU WILL TAKE TIME OFF TO VOTE.**

Revised 4.14.2020

¹ Employers: Not less than ten working days before any Election Day, 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 law. Such notice shall be kept posted until the close of the polls on Election Day.

New York State Voting Leave Rights

Section 3-110 of the New York State Election Law, which relates to providing employees in New York State time off to vote, was recently amended effective April 3, 2020.

Eligibility

Generally, New York State employees are eligible for up to two hours of paid time off to vote if they do not have “sufficient time to vote.” An employee is deemed to have “sufficient time to vote” if an employee has four consecutive hours to vote either from the opening of the polls to the beginning of their work shift, or four consecutive hours between the end of a working shift and the closing of the polls.

For example, if an employee is scheduled from 9 am to 5 pm, and the polls are opened from 6 am to 9 pm, the employee is **not** eligible for paid time off to vote, because the polls are open for four consecutive hours after the employee’s shift ends at 5 pm. However, if an employee is scheduled to work from 9 am to 6 pm, then the employee **is** eligible for paid time off to vote, because the employee only has three consecutive hours off in the beginning of their shift and end of their shift.

How much paid time off to vote are employees entitled to?

The Election Law provides for up to two hours of paid time off to enable an employee time to vote when added to their voting time outside their working hours. While two hours is the maximum paid time off allowed under the law, the amount of paid time off required for an employee to vote must be determined on a case-by-case basis as waiting times at polling places, traffic conditions, and other factors may vary wildly.

How many days in advance must an employee notify their employer of their intention to take paid time off to vote?

An employee must notify an employer at least two working days prior to their intention to take paid time off to vote, but not more than ten working days.

Does the notice requirement of two "working" days mean two "business" days?

Generally, yes. The statutory language calls for employees to give notice of their intent to take the time off two "working days" prior to the election. "Working day" is not defined in the Election Law, nor is it defined in the General Construction Law. It has been held that "working days" means "days as they succeed each other, exclusive of Sundays and holidays." *Pedersen v Eugster*, 14 F 422, 422 (ED La 1882); see also 1915, Op. Atty. Gen. 139. However, it has also been recognized, in contract cases, that there is no

general rule with respect to the term "working days," since the term varies in different occupations, and hence, it should be determined in light of the circumstances of the particular case. See *F.J. Mumm Contr. Co. v Vil. of Kenmore*, 104 Misc 268, 268 (Erie Sup Ct 1918). As such, it is the general opinion of the Board that "working days" is determined in light of each individual employer. In other words, "working days" means any day that the employer is operating and/or open for business.

Can an employer require an employee to use their "personal time off" to vote to comply with § 3-110 of the Election Law?

No. Employees cannot be required to utilize any other form of earned leave time to vote.

What remedies are available to employees that are not provided with paid time off to vote?

Employees are encouraged to first speak with their employer to inform them of the requirements of the Election Law. If the employer fails or otherwise refuses to provide the employee with paid time off to vote, the employee may wish to speak with a private attorney and/or contact the following entities:

For Wage Payment Purposes:

New York State Department of Labor
Division of Labor Standards
Bldg. 12, Rm. 185C,
State Office Campus, Albany NY 12240
Tel. 888-4-NYSDOL (469-7365)

New York State Attorney General's Office Labor Bureau
28 Liberty Street
New York, NY 10005
Tel. (212) 416-8700

For Election Law Compliance Purposes:

Contact your [County Board of Elections](#)

NYS Board of Elections
40 North Pearl St, Suite 5
Albany, NY 12207-2729
Tel. (518) 474-6220
INFO@elections.ny.gov