



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 5, 2022

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: H.B. 288 (Paid Time Off to Vote)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 288¹ which would require that certain private and public employers in the State of Delaware give an employee who is scheduled to work at least eight hours on an election day two hours of paid leave for the employee to vote. The Act excludes individuals engaged in activities for education, charitable, religious, or nonprofit organizations when an employment relationship does not exist or where services are rendered to such organizations gratuitously; and employees whose collective bargaining agreement expressly waives time off for voting. SCPD strongly endorses this bill, but requires clarification on why an employer should be allowed to seek to waive this right in a collective bargaining agreement. SCPD has the following observations.

The Act requires employees to give two working days' notice in advance of an election that they intend to use paid time off to vote. The two hours of leave must take place during the normally scheduled work hours and can be specified by the employer. Employers are allowed to ask the employee to use the leave time either at

¹ <https://legis.delaware.gov/BillDetail?LegislationId=79094>

the beginning or end of a shift, but not during lunch or meal breaks. The pay must be commensurate with the employee's normal wage or with the full state minimum wage if higher. If voting takes more than two hours, the employer must allow the employee to use other forms of accrued leave time. Employers cannot impose disciplinary measures or terminate an employee who chooses to use this paid time off and they must post notice of the rights created in the Act no later than ten working days before an election.

The Act would vest the Department of Labor ("the Department") with responsibility for enforcement, including setting up a complaint mechanism. Employers who violate the Act are subject to civil penalties ranging from \$500-\$1,000; heightened penalties of \$1,000-\$5,000 can be imposed if an employer is found to have retaliated against an employee. In addition, the employer shall be assessed actual damages incurred by the employee for lost wages or benefits. Finally, employees will have the right to bring a civil lawsuit for equitable relief², such as their reinstatement, as well as monetary damages, including costs and attorneys' fees, without first being required to go through the Department's complaint process.

During the 2020 election, twenty-eight states required employers to grant time off for voting; twenty-one of them required the leave to be paid.³ Eighteen states require the employee to provide notification to the employer of their intention to take paid time off to vote. For example, New York⁴ requires employees provide notification no more than ten nor less than two working days before the election while others like Maryland have not specified a time frame⁵.

In addition to allowing paid time off to vote, Maryland requires that employees taking advantage of the right provide proof that they voted.⁶ Maryland law does not specify the type of proof that must be provided; however, this reviewer notes that "proof" could take the form of a receipt, sticker, or other documentation.⁷

² An equitable remedy is "a nonmonetary one such as an injunction or specific performance, obtained when available legal remedies, usu. monetary damages, cannot adequately redress the injury." REMEDY, Black's Law Dictionary (11th ed. 2019).

³ https://ballotpedia.org/States_that_require_employers_to_grant_employees_time_off_to_vote,_2020.

⁴ N.Y. Elec. Law § 3-110.

⁵ Md. Code 1957 Art. 33 § 10-315.

⁶ *Id.*

⁷ For example, before the statute was repealed, Hawai'i law required that the voter retain their "voter's receipt" as proof of voting. HI Rev Stat § 11-95 (repealed).

Voting matters for the disability community. Paid time off to vote will expand voting access for people with disabilities and will allow them more freedom to choose how to cast their ballots. One reason for low-voter turnout is because Americans cannot get away from work to exercise their right to vote. According to a survey from the Society for Human Resource Management (“SHRM”), in 2018, forty-four percent of U.S. employers offered their workers paid time off to vote, an increase of two percent from 2017.⁸

People with disabilities are not only unemployed at a higher rate than nondisabled people but they are also underemployed compared to nondisabled peers. According to the U.S Department of Labor’s Bureau of Labor Statistics, nearly sixty-two percent of individuals with a disability were employed; however, workers with a disability were more likely to be employed part time than individuals without disabilities.⁹ Therefore, people with disabilities would be overrepresented among jobs that: offer limited control over an employee’s work schedule, can include overtime hours or unusual scheduling, do not offer paid leave, have limited amounts of leave, and more routinely deny leave requests (retail, food service, etc.). A guarantee of leave for voting can make all the difference for voters employed in these industries.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 288-Paid Time Off to Vote 4-5-22

⁸ <https://www.cnbc.com/2018/10/31/just-44percent-of-us-employers-give-their-workers-paid-time-off-to-vote.html> by Abigail Johnson Hess “A record 44% of US employers will give their workers paid time off to vote this year.”

⁹ “In 2020, twenty0nine percent of workers with a disability were employed part time, compared with sixteen percent for those with no disability.” See <https://www.bls.gov/news.release/pdf/disabl.pdf>.