

LABOR & EMPLOYMENT BULLETIN

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Voting Leave Laws:

Are You Required to Allow Your Employees to Leave to Vote?

As the presidential election draws near, we are all bombarded with political advertisements, campaign paraphernalia, and social-media political "discussions." Reminders that the election is upon us are everywhere and many employers may already be faced with employees questioning whether they will be able to leave work to vote, and furthermore, whether they will be paid for the time they are away from work to vote. Because many states, including Alabama, have voting leave laws, it is important that you take time to understand what is required from you as an employer.

Alabama's voting leave law requires that employers allow employees the "necessary" time off to vote, not exceeding one hour, unless the employee has two hours before work or one hour after work available to vote. If the employee's workday begins at least two hours after the polls open or ends at least one hour before the polls close, the employee is not entitled to leave during working hours. However, if an employee does not meet this exclusion, you must allow them leave to vote as long as the employee provides you with "reasonable" notice that they will need to leave work to vote. Additionally, as an employer in Alabama, you have the right to specify the hours during which the employee may leave work to vote. Finally, in contrast to many other states' voting leave laws, the Alabama law does not require employers to pay employees for time spent away from work.

Voting leave laws vary considerably from state to state, but it is important that you follow the applicable laws on November 6, 2012 and on any other election day. If you have any questions related to voting leave laws in Alabama or in any other state, please contact Starnes Davis Florie LLP for further information.

- Breanna R. Harris

Why Should We Worry About Family Responsibilities Discrimination?

There is a new wave of employment litigation which is gaining steam and which should present a serious concern to employers – family responsibilities discrimination. In a nutshell, family responsibilities discrimination is discrimination against a man or woman because he or she is a caregiver, is a parent, or is pregnant. While "caregiver" and "parent" are not technically protected categories under federal law, there are circumstances in which stereotyping against parents or caregivers might constitute actionable discrimination.

More and more often, plaintiffs are using legal theories such as gender discrimination, pregnancy discrimination, and retaliation to pursue family responsibilities discrimination claims. In fact, family responsibilities litigation has increased nearly 400% from 2000 to 2010. Even more disturbing is the success rate of these cases. According to data collected by the center for WorkLife Law, nearly two-thirds of plaintiffs who sue in federal court on the basis of family responsibilities discrimination prevail at trial. Their success rate is approximately twice as high as that of plaintiffs in federal employment discrimination cases in general. Moreover, the demographics of the United States workforce indicate that the upward trend in family responsibilities discrimination will likely continue. For instance, nearly one-third of families have at least one family member with a disability, nearly 10 million adult children over the age of 50 care for their aging parents, and more than half of the children in the U.S. live in households where all the adults work.

With these statistics in mind, employers need to reassess their practices and attitudes to ensure that an underlying bias against care giving employees does not surface. Some common examples of scenarios leading to family responsibilities discrimination include:

- Denying employment opportunities to female applicants with young children but not to similarly situated male applicants with young children.
- Reducing a female employee's workload after she becomes a mother based on the assumption that, as a new mother, she will be less committed to her job and will not want to work overtime.
- Limiting a pregnant worker's job duties based on pregnancy-related stereotypes.
- Denying a male caregiver leave to care for an infant under circumstances where such leave would be granted to a female employee.
- Refusing to hire a job applicant who is the single parent of a child with a disability based on the assumption that caregiving responsibilities will make the applicant unreliable.

Like any type of discrimination, employers need to take proactive steps in order to prevent family responsibilities discrimination from developing in their workplace. Some basic actions employers can take to fend off the threat of family responsibilities discrimination include:

- Adopting a policy prohibiting family responsibilities discrimination. This policy can come in the form of a specifically tailored stand-alone policy or an addition to your current anti-discrimination policy.
- Institute training for employees and supervisors on how to recognize and avoid discrimination based on caregiving responsibilities. The training should stress that job applicants and employees should not be asked about their child care responsibilities, that supervisors should not withhold job duties or opportunities from an employee based on the assumption that caregiving responsibilities will prevent that employee from being successful, and that denying a male employee leave or flexibility that is normally offered to a female employee is not allowed.
- Consider whether your workplace offers sufficient flexibility to assist employees in meeting both their employment and caregiving needs. This could include assessing whether flexible arrangements such as compressed work weeks, permitting two employees to share a single job, telecommuting, or paid family leave could work for your company.

Employers who understand the threat of family responsibilities discrimination and are aware of the different shapes it can take stand a better chance of warding off any potential claims. The Labor and Employment attorneys at Starnes Davis Florie LLP are available to assist with all aspects of policy development, implementation, and advice regarding this developing area of discrimination law.

- *Allison J. Garton*

How Does the Number of EEOC Charges Filed in Alabama Compare to Other States?

The Equal Employment Opportunity Commission ("EEOC") has begun providing EEOC charge data by state. According to this data, EEOC charges filed in Alabama account for 3.2% of the total charges filed in the United States. Specifically, in Fiscal Year 2011, 3,154 charges were filed in Alabama, which was slightly lower than the 3,493 charges filed in Fiscal Year 2010.

In comparison to other Southern states, the number of charges filed in Alabama is about average. Charges filed in Florida accounted for 8.1% of the total number of charges filed in the United States, while Georgia accounted for 5.6%; Tennessee accounted for 3.3%; Louisiana accounted for 2.1%; and Mississippi accounted for 1.8%. Texas has the highest percentage of charges filed in the United States with 10.0%.

The majority (51.6%) of the 3,154 charges filed in Alabama in 2011 were charges based on race. Retaliation charges accounted for the next highest category, with 959 (30.4%) charges filed, and sex discrimination charges followed closely with 934 (29.6%) charges filed. This statistical information related to EEOC charge data by state is available on the EEOC's website at www1.eeoc.gov/eeoc/statistics.

- *Breanna R. Harris*

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