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Nevada's upcoming weekend caucus is likely to create problems for employers throughout the state who need to comply with Nevada's voting leave statutes. Given that the caucus is occurring during a holiday weekend, employers of Nevada's gambling and hospitality industries may face particular logistical issues when providing time off for employees to vote.

Hospitality

A Littler Mendelson Newsletter

Nevada's Upcoming Caucus And Its Voting Leave Statute: Less Than A Perfect Fit

By Wendy Medura Krincek and Andrew L. Rempfer

Nevada's caucuses are scheduled for Saturday, January 19, 2008. Nevada's Republican caucus begins at 9:30 A.M. followed by the Democratic caucus at 11:00 A.M.

When Nevada's Democratic and Republican parties scheduled their primaries for a weekend, a holiday weekend at that, and staggered the starting time, they likely believed voter turn-out would increase, thus justifying the parties' controversial decision to place Nevada's primary at the beginning of the nomination schedule. While this may have been each party's respective purpose, the law of unintended consequences applies with full force to their decision. In a Monday thru Friday workday state like Iowa, a weekend primary may be the most convenient for the greatest number of people. In a 24 hours-a-day, 7 days a week location such as Las Vegas, Nevada, generally, a caucus on a holiday weekend presents unique issues. Moreover, Nevada's voting leave statute is tailored to the more traditional election process whereby voting hours run from morning until evening giving many employees the opportunity to vote either before or after work. This is not the case with the caucus, as there is a single appointed time to participate depending upon party affiliation, which raises unique issues for employers.

Nevada's Employee-leave Voting Statute: Nevada Revised Statute 293.463

Irrespective of which party you caucus for, Nevada's employee-leave voting

statute – Nevada Revised Statute (NRS) 293.463 – generally allows employees leave to vote at elections. Presumably, the leave also applies to the caucus. In a city like Las Vegas, where employees frequently work weekends and may work quite a distance away from their precincts, an employer must be especially cautious of violating Nevada's employee-leave voting statute. Nevada Revised Statute 293.463, states:

1. Any registered voter may absent himself from his place of employment at a time to be designated by the employer for a sufficient time to vote, if it is impracticable for him to vote before or after his hours of employment. A sufficient time to vote shall be determined as follows:
 - a. If the distance between the place of such voter's employment and the polling place where such person votes is 2 miles or less - 1 hour.
 - b. If the distance is more than 2 miles but not more than 10 miles - 2 hours.
 - c. If the distance is more than 10 miles - 3 hours.
2. Such voter may not, because of such absence, be discharged, disciplined or penalized, nor shall any deduction be made from his usual salary or wages by reason of such absence.
3. Application for leave of absence to vote shall be made to the employer or person authorized to grant such

leave prior to the day of the election.

4. Any employer or person authorized to grant the leave of absence provided for in subsection 1, who denies any registered voter any right granted under this section, or who otherwise violates the provisions of this section, is guilty of a misdemeanor.

Frequently Asked Questions Concerning Employee Voting Leave in Nevada

Based on the foregoing, an employer/employee may have the following questions:

1. Are the caucus' covered as an "election"?

Answer: Nevada's voting laws do not specifically state the caucus' are an "election" that trigger the requirements of NRS 293.463. It appears, though, since the caucus is the only chance for Nevada's voters to select their candidate of choice, it would likely constitute an "election" that would trigger the protections of NRS 293.463.

2. Must I allow employees leave to caucus; what employees are entitled to voting leave and when must leave be requested?

Answer: Yes, leave must be given if it is impracticable for the employee to vote before or after their hours of employment. Further, all employees that ask for leave on a timely basis, i.e., at least the day before the caucus, are entitled to leave.

3. How much leave must be granted and when must it be requested?

Answer: As NRS 293.463(1)(a) thru (c) states the leave varies on how far away the polling place (in this case, the caucus location) is from the place of work. If the distance is two miles or less, 1 hour must be given. If the distance is more than 2 miles but not more than 10 miles, 2 hours must be given. And, finally, if the distance is more than 10 miles, 3 hours of leave must be given. Employers should keep in mind that participation in

the caucus will likely take longer than casting a vote at a voting machine and likely will take more than one hour. Therefore, it may not be reasonable for an employer to strictly enforce the leave times provided in the statute.

The staggered starting times of the caucuses are theoretically supposed to alleviate congestion and speed-up the caucusing process, which has been known to drag-on, time-wise. Because the starting-times differ, though, the employer could easily discern their employees' party affiliation. Consequentially, employers will want to make sure that all leave-related decision with respect to the caucus are made consistently for all employees regardless of whether they are requesting leave for the earlier or later caucus.

Employers should also keep in mind that Nevada expects a record caucus turn-out, with caucus-goers expected to wait in long lines to vote for their nominees. Nevada's voting leave statute provides that an employee must request leave at least the day prior to the election. All employees may not be aware of this requirement. In order to ensure you are prepared for the amount of employees intending to attend the caucus, employers may want to advise their workforce of this requirement in advance.

4. What discipline may be imposed on an employee that takes too much, or improperly requests, leave to vote at the caucus?

Answer: NRS 293.463 specifically states that a voter (employee) may not be, because of such absence, be discharged, disciplined or penalized, nor shall any deduction be made from his usual salary or wages by reason of such absence. If an employee returns to work late, an employer should be especially cautious of disciplining that employee since it is not clear whether the amount of leave provided by statute will be sufficient to cover the

caucus process. This is all the more true because, as noted, an employer could easily discern for which party the employee caucused. While abuse of voting leave may be the proper subject of discipline, such decisions should be scrutinized carefully.

5. Is leave paid?

Answer: Yes. NRS 293.463 states "nor shall any deduction be made from his usual salary or wages by reason of such absence."

What is the penalty for violating NRS 293.463?

Answer: Violation of the statute constitutes a misdemeanor. Misdemeanors are punishable by jail time up to 6 months in prison or by a fine not less than \$1,000, or both, for each violation.

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