

Practical Answers to Your HR Questions

By Mark A. Wagner



Q State and national elections are next month. Do I have to give my employees time off to vote?

A It depends. Under a Utah statute, an employer must permit an employee to take a two-hour leave of absence to vote if that employee does not have three or more hours away from work between the time polls open and close. The statute does not state whether the three hours away from work must be in a single block of time or whether the three hours can be dispersed throughout the day. However, the safest interpretation is that the statute applies to all employees who do not have at least three hours of uninterrupted time away from work to vote.

For example, if the polls open at 7:00 a.m. and close at 8:00 p.m., and an employee works from 8:00 a.m. to 5:00 p.m., then the employee has a three-hour block of time (from 5:00 p.m. to 8:00 p.m.) in which to vote, and the employer would not be required to give the employee a leave of absence to vote. However, if an employee works from 9:00 a.m. to 6:00 p.m., that employee does not have a three-hour block of time, and the employer must provide a two-hour leave of absence for the employee to cast his ballot, if requested by the employee.

A leave of absence for voting purposes is subject to some statutory constraints. First, as previously indicated, an employee may take only two hours to vote. Second, the employee must make a request, prior to the election day, for a leave of absence to vote. Third, the employer is entitled to specify the hours during which the employee may be absent for the purpose of voting, subject to the proviso that if the employee requests the leave of absence for the beginning or end of her work shift, the employer must grant this request.

Importantly, an employer may not deduct an employee's usual salary or wages during the employee's two-hour, preauthorized leave of absence to vote. An employer who violates this statute is guilty of a class B misdemeanor criminal offense.

Q We have a very difficult supervisor on staff. In the opinion of many of our employees, she is bordering on being emotionally abusive. She continually berates employees and corrects them in an almost antagonistic fashion. On the upside, many of our clients really like her, and she is effective within the immediate scope of her job. If we do not take some sort of corrective action, could we be sued over condoning a "hostile" work environment?

A Subject to the observation that you "can always be sued" regardless of whether a legal basis for a lawsuit exists, and to the absence of any facts in your question suggesting your supervisor concentrates her abusive conduct on any particular "protected class" of employees, the short-term answer is probably "no." Although many state and federal laws protect employees from workplace hostility targeted at them because of their gender, race, religion, ethnicity, national origin, age (if over 40), disability, or citizenship status, no federal or state law prohibits employees from treating all coworkers alike in an unprofessional, unpleasant manner. In other words, it is not necessarily illegal to be a jerk, so long as you are an equal-opportunity jerk. This is apparently the situation that you face.

Even if the supervisor's conduct is not presently violating any laws, however, I strongly suggest you consider taking action to improve the situation. Even if legal, your supervisor's treatment of your other employees is more than likely having a negative impact on your staff. If it hasn't already, her behavior will adversely affect morale and might eventually result in an increased turnover rate, which reduces your ability to retain good employees and decreases your bottom line. Her behavior, if severe enough, may even result in worker's compensation claims by employees for stress-related illnesses. In addition, depending on the precise nature of her behavior, there might even be potential liability implications in the event she is involved in an incident of workplace violence. Remember, in the event of a problem or dispute, your actions or inactions will be evaluated from the standpoint of perfect 20/20 hindsight, and probably by jurors who, at some point in their lives, have been on the receiving end of bullying behavior, whether in the workplace or some other context.

In addressing your supervisor's conduct, you have several different options you can, and should, consider. Such options range from a "simple," traditional corrective interview, to providing her with mentoring or training to enable her to deal more effectively with her co-workers and the stresses of her job. Seemingly paradoxically, some issues of workplace bullying can be successfully addressed with assertiveness training, which can help employees learn more appropriate and effective ways of dealing with potentially confrontational situations. You should exercise caution, however, if you believe that her behavior might be the result of a medical or psychological condition, or if the company might have possession of any records that may indicate the potential existence of such a condition. Under such circumstances, you are well advised to obtain legal advice from an attorney familiar with the applicable requirements of the Americans with Disabilities Act before you take any significant action. ■



In the Trenches is provided courtesy of the Labor and Employment Law Group of Van Cott, Bagley, Cornwall & McCarthy, P.C., and is authored by Mark A. Wagner, a shareholder at the firm and Chair of the firm's Labor and Employment Law Group. You can reach Mr. Wagner at 801.532.3333. If you have questions you would like considered for publication in future issues of HR Views, please send them to sophie@newslettersink.net.

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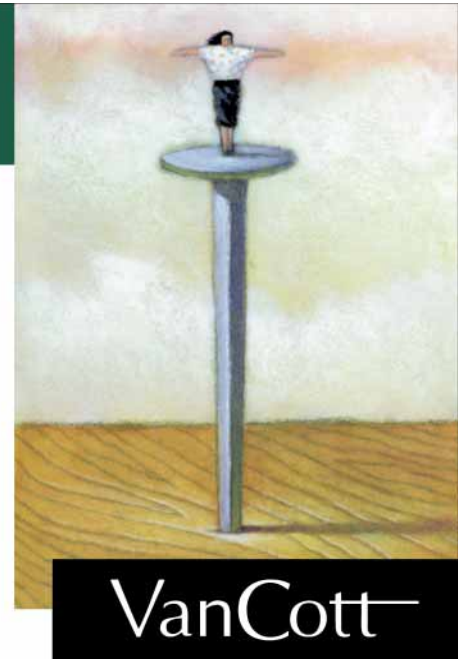
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