Message

From: Shanahan, Katherine [Shanahan.Katherine@epa.gov]
Sent: 10/26/2020 6:34:17 PM
To: Jensen, LeAnn [Jensen.Leann@epa.gov]; Johnson, Arthur [Johnson.Arthur@epa.gov]
Subject: RE: Excused Absence for Voting

Please hold for my response

From: Jensen, LeAnn <Jensen.Leann@epa.gov>
Sent: Monday, October 26, 2020 2:33 PM
To: Johnson, Arthur <Johnson.Arthur@epa.gov>
Cc: Szaro, Deb <Szaro.Deb@epa.gov>; Shanahan, Katherine <Shanahan.Katherine@epa.gov>; Deziel, Dennis <Deziel.Dennis@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>
Subject: RE: Excused Absence for Voting

Hi Art –

The process you have described makes sense.

Of key importance to ethics practitioners is whether the employee is being paid for his outside activity as a poll worker. OGC Ethics has opined that employees who receive compensation for this outside employment should take annual or other appropriate leave.

Also, kindly note tha Ex. 6 Personal Privacy (PP) id reach out to me for ethics advice about being a poll worker. Here, in relevant part, is what I advised:

> Here is the official advice from the Office of Special Counsel for less restricted employees (i.e., you, me and everyone else who isn't an SES-er (except for the RA)):
>
> > Below is a Hatch Act FAQ regarding service as a poll worker, poll watcher, election official, or in any other capacity at the polls on election day. The FAQ is also posted on OSC's website at https://osc.gov/Services/Pages/HatchAct-FAQ.aspx.
> >
> > Q: May I serve as a poll worker, poll watcher, election official, or in any other capacity at the polls on election day?
> >
> > **Less Restricted Employees:** Generally yes. The Hatch Act does not prohibit a less restricted federal employee from performing purely nonpartisan election administration duties on behalf of a state or local government, such as by serving as a municipal or county poll worker. Performing such duties is not "political activity" as defined in 5 C.F.R. § 734.101. However, other laws or regulations may apply. Therefore, employees should consult with an agency ethics official to determine whether there are any other possible restrictions on serving as a poll worker on behalf of a state or local government, including whether employees may accept compensation for such service.
> >
> > The Hatch Act also does not prohibit a less restricted employee from working at the polls on behalf of a political party, partisan political group, or partisan campaign, such as by serving as a poll watcher or challenger, but certain restrictions do apply. Because volunteering on behalf of a political party, partisan political group, or partisan campaign is political activity, a less restricted employee may not do so while on duty, wearing an agency uniform or insignia, or using a government-owned or -leased vehicle. Provided that the employee complies with these restrictions, the Hatch Act does not prohibit a

less restricted employee from working at the polls on behalf of, or in coordination with, a political party, partisan political group, or partisan campaign.

So, as long as the election day work is non-partisan, you need not worry about Hatch Act restrictions. Other common-sense ethics restrictions include:

- If you will be paid, Agency equipment cannot be used for this outside work. If the work is unpaid, you can use limited Agency resources.
- Leave your EPA fleece vest (and other clothing with the EPA logo) at home, and don't refer to your official title when you engage in this outside work.
- Don't use your official position to advocate for or against a partisan political candidate or party.
- Don't disclose any non-public EPA information.

The Office of Personnel Management has drafted a flier on Election Day flexibilities. Similar to the message from Donna Vizian, it states that "[a]n employee who requests time off to train and serve as a non-partisan volunteer election official to assist in the proper and orderly voting and procedures at polling stations shall be granted excused absence to the maximum extent possible while accounting for the responsibilities and duties to carry out the agency mission. This is an encouragement by management that if employees want to volunteer to be a non-partisan election official on November 3, 2020, managers will try to accommodate the excused absence request where there are not negative impacts to critical missions." Accordingly, I would reason that unless you have Agency work that must be done by the close of business on 11/3, your supervisor has the flexibility to give you admin leave for this unpaid activity "to the maximum extent possible."

If you want to talk, I'm at 617-918-1072.

LeAnn

From: Johnson, Arthur <Johnson.Arthur@epa.gov>
Sent: Monday, October 26, 2020 1:57 PM
Cc: Szaro, Deb <Szaro.Deb@epa.gov>; Jensen, LeAnn <Jensen.Leann@epa.gov>; Shanahan, Katherine <Shanahan.Katherine@epa.gov>; Deziel, Dennis <Deziel.Dennis@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>
Subject: RE: Excused Absence for Voting

All,
See question from Ex. 6 Personal Privacy (PP) The Mass Mailer does not describe the process. I assume Steve should send an email to Deb as the Deputy Ethics Official (DEO) describing his request/circumstances. Deb, in consultation with OGS (Karl and/or Leann) can make the determination. If determined that the proposed activity comports with ethics requirements, I would suggest that Deb then send forward the email to Dennis requesting he document his approval of the excused absence.

If that makes sense to all, I can/will respond to Ex. 6 Personal Privacy (PP)

Thanks,
Art

From: Ex. 6 Personal Privacy (PP)
Sent: Monday, October 26, 2020 12:56 PM
To: Johnson, Arthur <Johnson.Arthur@epa.gov>
Subject: RE: Excused Absence for Voting

Hi Art,

How do I get RA approval for non-partisan volunteer work at the polls on election day (from the Non-Partisan Volunteer section of the attached email):

Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements.

Shall I write to Deb? I checked with the ethics official and it qualifies.

Thanks,

Ex. 6 Personal Privacy (PP)

From: Johnson, Arthur <johnson.Arthur@epa.gov>
Sent: Monday, October 26, 2020 12:52 PM
To: R1 ALLEPANE EPA Employees Only <R1_ALLEPANEEPAONLY@epa.gov>
Subject: FW: Excused Absence for Voting

In follow-up to today's All-Hands, please see Mass Mailer below re: Excused Absence for Voting.

Thanks,
Art Johnson
Mission Support Division Director, SRO
USEPA Region I
5 Post Office Square (Mail Code: 05-1)
Boston, MA 02109-3912
W: 617-918-8301
Ex. 6 Personal Privacy (PP)

From: MassMailer <massmailer@epa.gov>
Sent: Thursday, October 22, 2020 2:02 PM
To: MassMailer <massmailer@epa.gov>
Subject: Excused Absence for Voting

Dear Colleagues,

Election Day is Tuesday, November 3, 2020. According to federal guidelines, employees may be granted an excused absence (i.e., administrative leave) to vote depending on their work schedule and the polling times for their voting jurisdiction. There are additional considerations related to voting on Election Day, early voting, and non-partisan volunteering summarized below.

Voting on Election Day

If the difference between an employee's scheduled arrival and departure times and the polls' opening and closing time is less than three hours, an employee is entitled to administrative leave, up to a maximum of three hours. If the polls open or close at least three hours before or after an employee's work schedule, no excused absence may be granted.

If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, the agency may grant excused absence (not to exceed one day) to allow the employee to travel to the voting place to cast a ballot. If more than one day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

Early Voting

In regards to early voting, the agency may grant excused absence on a scheduled workday only when: 1) the employee will be unable to vote on the day of the election because of activities directly related to the agency's mission (such as temporary duty travel) and cannot vote by absentee ballot; or 2) early voting hours are the same as, or exceed, voting hours on the day of the election. In such case, the general Election Day guidance above applies. If the polling place hours are shorter than on Election Day, the employee is not eligible for excused absence.

Non-Partisan Volunteer

An employee who requests time off to train and serve as a non-partisan volunteer election official to assist at polling stations may be granted excused absence to the maximum extent possible while accounting for the responsibilities and duties to carry out the agency's mission. The agency will try to accommodate the excused absence request so long as there are no negative impacts to critical mission work. Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements. Approved administrative leave for participation in volunteer activities should not involve an employee being absent from the workplace for a significant period.

Any employee needing an excused absence to vote or volunteer should first seek approval from their first-line supervisor. If approved, the time must be documented in PeoplePlus using the following time reporting codes:

- **VOTIN** (Administrative Leave – Voting)
- **VOLRT** (Administrative Leave – Volunteer Activities)

Please refer to the U.S. Environmental Protection Agency's policies regarding official time off for voting and the use of administrative leave. Some of the agency's collective bargaining agreements contain similar language. Please refer to those agreements or the applicable union point of contact for further information.

If you have questions regarding these guidelines, please contact the Policy and Accountability Branch, Office of Human Resources, at OHR_PPTD_PAB.

Best,
Donna J. Vizian
Principal Deputy Assistant Administrator, Office of Mission Support