



STATE OF NEW MEXICO
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

September 26, 2017

Daniel Secrist, Executive Board, CWA
NM Federation of Labor, AFL-CIO
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Dear Mr. Secrist:

Thank you for your inquiry regarding the Office of the New Mexico Secretary of State's review and interpretation of NMSA 1978 §1-12-42 of the New Mexico Election Code, and, specifically, whether this section applies to state employees who seek administrative leave in order to vote in municipal elections. I appreciate you contacting me regarding this important matter.

Section 1-12-42 provides, in part, that "[o]n election day a voter may absent himself from employment in which he is engaged for two hours for the purpose of voting between the time of opening and the time of closing the polls. The voter *shall not be liable to any penalty* for such absence; however, the employer may specify the hours during this period in which the voter may be absent." [Emphasis added].

While this section of law does not explicitly state that paid time off is required, the requirement that the voter "shall not be liable to any penalty" has been correctly interpreted by the State of New Mexico to grant two hours of paid administrative leave to allow employees an opportunity to exercise their civic duty to vote (See 1.7.7.14 NMAC). Providing for administrative leave ensures that the employer is allowing a non-punitive opportunity, in full compliance with NMSA 1978 §1-12-42, to vote regardless of whether an employee may or may not have other types of leave accrued, and ensures all employees are treated equitably in terms of providing time off to vote.

Municipal elections are governed by NMSA 1978 Chapter 3, Articles 8 and 9, which may be cited as the "Municipal Election Code." This section of law provides procedures that outline the conduct and administration of municipal elections. However, when the Municipal Election Code

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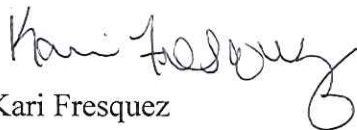
is silent, NMSA 1978 §3-8-1 requires that the New Mexico Election Code shall govern with respect to procedures and protections of municipal elections. Since the Municipal Election Code does not contain a specific provision governing the procedures and protections for providing employees with time off to vote, NMSA 1978 §1-12-42 governs this aspect of municipal elections.

Furthermore, pursuant to NMSA 1978 §1-1-19, the New Mexico Election Code applies, in part to, primary and general elections and “to the extent procedures are incorporated or adopted by reference by separate laws governing such elections or to the extent procedures are not specified by such laws, certain provisions of the Election Code shall also apply to municipal officer or municipal bond elections.” This section of law provides further strength that NMSA 1978 §1-12-42 is applicable to municipal elections.

As the Chief Election Officer for the State of New Mexico, pursuant to the duties of the Secretary of State to ensure uniform application, operation and interpretation of the Election Code (NMSA 1978 §1-2-1), and after review of the referenced sections of law in the New Mexico Election Code, the Municipal Election Code, and 1.7.7.14 NMAC, the Secretary of State interprets these laws to be applicable to municipal elections conducted in the state. Specifically, state government employees who are registered to vote are entitled to two hours of administrative leave in order to exercise the right to vote in municipal elections. Applicable law allows that the employer may specify the hours during the work period in which the voter may be absent, and leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls.

If you require further information in regards to this matter, please don't hesitate to contact me at 505-827-3600 or kari.fresquez@state.nm.us.

Sincerely,



Kari Fresquez
State Elections Director