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Jury Duty

Who, What, Why . . .

Who does it apply to: The Jurors Right to Reemployment Act and the Jury System Improvement Act of 1978 applies to all employers in Texas. These laws protect the employment status of those employees serving jury duty in either state or federal court.

Who is protected: All permanent employees serving jury duty are protected. Temporary or seasonal employees, those that work for a specific length of time or until a specific project is completed, are not protected.

What are they protected from: Not only are the employees protected from being fired, employers cannot threaten, intimidate or attempt to coerce employees to avoid jury duty.

Do I have to pay employees out on jury duty: Federal law does not require covered employers to pay employees for days that they do not work except as noted here:

- *Salaried Exempt Employees:* If an employee works any part of a week (5 minutes would count) and misses the rest of the week for jury or witness duty, he must receive “regular wages” for the workweek, but if the employee misses a full week, no pay is due for that week. “Regular wages” means the standard salary for the week, but does not include performance bonuses or services performed on any day the employee would not have earned wages, such as a scheduled day off. See the Employer Handbook editions on Overtime and Exemptions from Overtime for more guidance on what “exempt” means.
- *Salaried and Hourly Non-exempt Employees:* Employers do not have to pay the wages of non-exempt employees during jury service.
- *Temporary Employees:* Employers are not required to pay temporary or seasonal workers for jury service. Further, the job protection provisions of the laws do not apply to these workers.

Employers can opt to have employees use paid vacation or other paid time off for jury duty leave as long as it is not contrary to any existing company policies or labor agreements (this includes salary exempt employees). That said, an employer may not terminate healthcare benefits during jury service leave.

Do I need a policy: It is a good idea to create a policy for employees called to jury duty, so that when the situation arises, expectations are clear for both the employer and the employee. A lot of issues and questions can arise on this subject – use of time off, when to report the summons, how is unpaid leave handled, what are employees to do if they are released early one day, etc.

Does jury service count towards overtime: No. The hours spent in jury service do not count toward overtime, just as other types of paid leave and paid holiday hours do not count toward overtime.

Do I get reimbursed if I pay for jury service: Yes, but not for the full wages. The government doesn’t have that kind of money or they would dole it out to the employee directly. Employers who pay the employee regular wages during jury duty are entitled to be paid the amount the employee was paid for jury duty – yippee an extra \$6 a day!

Do employees have to give notice: There is no law that requires employees to give notice to the employer of jury service. For this reason it is important to have a policy instructing the employee to give notice as soon as possible. If they don’t, you can discipline or fire them for failing to give adequate notice and reasonable time for you to react.

What penalties is an employer subject to for a violation of jury duty? Criminally, an employer may be on the hook for a Class B Misdemeanor if it threatens, coerces, or terminates an employee over jury duty. In civil court, an employer may be liable for reinstatement and damages between one and five years compensation.

Common Situations:

Perception is reality: Bob is a salesman who has been with his company for five years. Over the past year his sales have decreased and he has been counseled several times, given two written warnings, and encouraged to increase his sales. Bob gets called for jury duty and is out of work for two weeks. When he returns, his employer, without a written reprimand, fires him, citing his low sales and lack of improvement. Although there may have been good reason for firing Bob before he left for jury duty, firing him so close to his absence may land you in hot water. An employee who serves jury duty is entitled to return to the same position as when he left. It would be better to wait to avoid the perception of impropriety and give Bob a claim that probably is unwarranted.

Supervisor gone awry: Jenna is one of Happy Dale's most valued employees. She was summoned for jury duty and promptly notified her supervisor of the dates she would be required to be out of the office. In the weeks leading up to her service, her supervisor constantly makes negative comments to her about how she should lie and tell the court she is a racist to get out of jury duty. Jenna is then picked for a jury and is absent for three days. When she notifies her supervisor, he is furious and tells her that she has been assigned an important project that needs her immediate attention. When Jenna returns from jury service her supervisor fires her for failure to complete the project on time. Even if Happy Dale's owners are totally ignorant, they can be liable. Supervisors and other employees should be counseled that jury duty is job-protected leave. Employers will face penalties for any intimidation, coercion or negative employment actions based on an employee's jury service.

You lost your spot: Steve is a decent employee at Bob's Account Temps. He is called for jury duty and gets stuck on the J.O. Simpson murder trial that goes on and on and on for months. In the interim Bob's is forced to hire a temporary worker to cover Steve's work. The temporary employee turns out to be exceptional and Bob (the owner in case you didn't guess) hires the temp to replace Steve – permanently. Does the glove fit Bob? Unfortunately. Finding a better player does not warrant letting the employee go. That said, if Steve finishes jury duty and fails to call or return to work because he is working the interview circuit and writing a book about his experience, Bob may be in the clear. It is unfair that the employer does not have a right to know the employee's intent, but the law allows the employee to count on the employer keeping his job open.

What Should I Do:

Good: Encourage your employees to fulfill their civic responsibilities and ensure that the employee is allowed to take time off for service and allowed to return to the same job and the same responsibilities, benefits, etc. Counsel supervisors about the law and let them know that it is illegal to intimidate or coerce an employee not to serve on a jury.

Better: Create a written policy that clearly spells out what will happen when an employee is called for jury service. Cover when an employee is expected to work if not at jury duty, when the employee needs to notify you of jury service, the time you will pay for an employee to be out, if any, how to deal with Court issued compensation, and whether use of paid time off will be required.

Best: Good and Better get it done for this edition.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@grayreed.com or by phone at **469.320.6063**