

## Supplemental FAQs about Absentee Voting and COVID-19

### **1. May a clerk decline to accommodate in-person voter registration and in-person absentee voting?**

No, as of March 19, the only form of voter registration allowed is in person at the municipal clerk's office or at an in-person absentee voting location. Wis. Stat. § 6.29 requires that electors may register in person after the close of the open registration period. Also, under Wis. Stat. § 6.86(1)(b) and the federal court decision in *One Wisconsin Institute*, electors may request an absentee ballot in person at the municipal clerk's office or an alternate location until the Sunday before the election.

While the statutes do not mandate specific times or a minimum number of hours where in-person registration of absentee voting must take place, the clear intent is that electors have reasonable opportunities to exercise those rights. The municipal clerk is required to establish and publish the hours for in-person absentee voting, which may include voting by appointment only. However, limitations on the hours must be reasonable based upon the number of voters and the demand for late registration and in-person absentee voting. In the opinion of WEC staff, municipal clerks do not have the authority or discretion to eliminate all opportunities for late registration or in-person absentee voting, absent a court order, an emergency declaration of the Governor or directive of state or local health officials (see next question).

### **2. What if a mayor, village board president, town board chair, or local governing body orders restrictions on or the elimination of late registration or in-person absentee voting?**

The election laws do not provide local elected officials the authority to place limits on or eliminate registration or voting options established by the statutes. WEC staff is consulting with other officials to clarify whether local officials possess any emergency authority to alter election procedures absent directives from state or local public health officials.

### **3. Can a county or municipal health department order that restrictions be placed on the in-person registration or in-person absentee voting processes?**

The Governor's emergency order designates the Wisconsin Department of Health Services as the lead agency related for implementing decisions related to the COVID-19 virus. WEC staff is in close contact with the Department and the Governor's Office related to developments and decisions which could impact administration of elections. Local health agencies may also issue directives for events, facilities and individuals within their jurisdictions.

Because of the potentially unprecedented nature of the impacts on individual behavior and public events, and because the circumstances will remain fluid for the foreseeable future, it is not possible to anticipate the exact impact of health directives on the conduct of the election. But it is important to keep in mind that directives to limit the number of people gathering in one location do not translate into the elimination of late registration

## Supplemental FAQs about Absentee Voting and COVID-19

or in-person absentee voting. Steps can be taken to minimize the health risks to electors, municipal staff and election inspectors. Clerks may, for example, limit the number of individuals in the office at one time for registration or absentee voting and require others to wait in line outside the office or the building. Appropriate social distancing practices may also be implemented for electors waiting in line.

If a municipal clerk believes they are required to eliminate late registration or in-person absentee voting based on a directive of either local elected officials or a county or local health agency, the clerk should immediately contact the WEC before implementing such a directive. Eliminating those processes without proper justification or authority risks a complaint being filed with the WEC, or an order being issued by the WEC, or litigation being initiated against the municipality. For that reason, the WEC encourages including the municipal attorney in any discussions regarding limiting registration or voting opportunities that are not supported by a statewide order.