

# COMPLIANCE

*at the  
State Level*

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Amber Fish Linke



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# State Lobbying: Why Be Concerned?

**Reputation**

**Loss of  
Contracts**

**Disqualification  
from  
Opportunities**

**Fines/  
Penalties**

**Personal  
Liability**

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# Lobbying Registration

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# Registration Thresholds vs. “First Toe in the Water”

- ▶ **Threshold** based on:
  - Compensation received
  - Expenditures made
  - Defined period of time
  - Preparation time
  
- ▶ **“First Toe in the Water”**
  - One lobbying contact / activity is considered lobbying.
  - Registration is usually required before lobbying activity takes place.

# Lobbyist Disclosure

- ▶ Compensation
- ▶ Subject Matter
- ▶ Contributions—Personal, PAC, Corporate
- ▶ Expenses on behalf of covered public officials
- ▶ Reimbursed Expenses for personal food, travel, and lodging

# Procurement Lobbying Disclosure

The following States require registration and/or reporting for procurement lobbying:

- ☐ **Alabama**
- ☐ **Arizona**
- ☐ **Arkansas**
- ☐ **Connecticut**
- ☐ **Delaware**
- ☐ **Florida**
- ☐ **Georgia**
- ☐ **Idaho**
- ☐ **Illinois**
- ☐ **Indiana**
- ☐ **Kansas**
- ☐ **Kentucky**
- ☐ **Louisiana**
- ☐ **Maryland**
- ☐ **Massachusetts**
- ☐ **Michigan**
- ☐ **Mississippi**
- ☐ **Missouri**
- ☐ **New Hampshire**
- ☐ **New Jersey**
- ☐ **New York**
- ☐ **North Carolina**
- ☐ **Ohio**
- ☐ **Oklahoma**
- ☐ **Pennsylvania**
- ☐ **Rhode Island**
- ☐ **Tennessee**
- ☐ **Texas**
- ☐ **Vermont**
- ☐ **Washington**

# Gift Laws

## ▶ **What is a gift?**

- ▶ Pen, baseball cap, coffee mug
- ▶ Flowers
- ▶ Meal
- ▶ Entertainment [sky box at sporting events]
- ▶ Holiday gifts [fruit basket; bottle of wine]
- ▶ Transportation and lodging provided to a covered official

# Gifts: Do you have a Corporate Policy?

## *Example:*

No gifts are permitted without prior approval from the U.S. Public Sector legal team

# Pay-to-Play

The practice of awarding contracts based upon political contributions or solicitations made to or on behalf of public officials who are in a position to award business.

# Pay-to-Play: Scope of Coverage

RESTRICTIONS on CONTRIBUTIONS:	DISCLOSURE of CONTRIBUTIONS:
California	California
Connecticut	Connecticut
Florida	Florida
Georgia	Georgia
Hawaii	Illinois
Illinois	Iowa
Indiana	Kentucky
Kentucky	Maryland
Louisiana	New Hampshire
Michigan	New Jersey
Missouri	New Mexico
Nebraska	Pennsylvania
New Hampshire	Rhode Island
New Jersey	
New Mexico	
Ohio	
Pennsylvania	
Rhode Island	
South Carolina	
Texas	
Vermont	
Virginia	
Washington	
West Virginia	
Wyoming	

# Pay-to-Play: Scope of Coverage

**Any of the following are subject to pay-to-play laws depending upon the jurisdiction:**

- ▶ Corporation
- ▶ Subsidiaries/Affiliated Entities/Parent Company
- ▶ Corporate PAC
- ▶ Board of Directors
- ▶ Officers/Partners/Directors
- ▶ Employees dealing with the state agency
- ▶ All employees
- ▶ Spouses and children of any of these

# Elements of an Effective Compliance Program

## Why implement a program?

- ▶ Strengthen brand and reputation
- ▶ Avoid debarment, fines, penalties and negative publicity
- ▶ Ensure maximum growth opportunities
- ▶ Companies ahead of the curve will be best positioned to earn new business in a more regulated environment

# Elements of an Effective Compliance Program

## Engage the relevant parties

- ▶ Business units handling government contracts
- ▶ Executives and directors
- ▶ Legal and compliance department
- ▶ Government relations team

## Education is fundamental

- ▶ Online training programs
- ▶ In-person training
- ▶ Information on company's Intranet
- ▶ E-mail alerts

# Elements of an Effective Compliance Program

- ▶ **Pre-Approval Process of Political Contributions**
  - ▶ Employees must seek clearance before they make a personal political contribution
  - ▶ Educate employees: you are not prying into their personal spending habits
- ▶ **Who do you pre-clear?**
  - ▶ Only those employees subject to the pay-to-play law
  - ▶ Certain classes of employees
  - ▶ All employees
- ▶ **How do you pre-clear?**
  - ▶ Web based system
  - ▶ Company form
  - ▶ E-mail reminders
  - ▶ Surveys

# Using a Federal PAC to Contribute to State Candidates

- ▶ No action required
- ▶ File using state forms
- ▶ File copy of FEC report/registration
- ▶ A combination of state and FEC filings
- ▶ User choice

# TRENDS & BEST PRACTICES

## **Procurement: Current Trend**

- ▶ Epidemic of corporate misbehavior has placed government contractors under a microscope
- ▶ *What do you mean I'm a lobbyist?*
- ▶ Laws that prohibit, limit, or require disclosure of gifts to public officials

# Life Cycle of a Contract

## Obtaining the Contract:

Lobbying  
Implications

## Servicing the Contract:

*Usually* not  
considered  
lobbying

## Renewing the Contract:

Lobbying  
Implications

# Assessment: Are you a procurement lobbyist?

## Identify high risk states

- ▶ Where are you most active?
- ▶ Where do you have contracts up for renewal?
- ▶ Work with legal department to create database of all existing contracts

## Possible Outcomes

- ▶ Must register as a lobbyist immediately
- ▶ May need to register in the future and must track activities
- ▶ Will not need to register as a lobbyist, based upon the current law and current activities

# Best Practices

- ▶ These laws are changing all the time
- ▶ Education, training, and communication are vital
- ▶ Alert new hires to the rules; alert compliance to new hires
- ▶ Procurement and pay-to-play laws can exist at any level of government
- ▶ Identify high risk jurisdictions before doing business
- ▶ Beware "*Everyone does it*", and do not take someone else's word
- ▶ If it would look bad in the newspaper, it is not worth the reputational risk, even if it is legal



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**Amber Fish Linke, Esq.**  
Director, Client & Product Operations  
330.761.9960 [alinke@stateandfed.com](mailto:alinke@stateandfed.com)

**[www.stateandfed.com](http://www.stateandfed.com)**



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