

Compliance - Lobbying, PACs and Social Media

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State and Local Lobbying

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- Three categories of activities may trigger lobby registration and reporting requirements at federal, state, and local levels.
 - Attempt to influence legislation.
 - Attempt to influence legislation or formal rulemaking by executive branch agency.
 - Attempt to influence legislation or any decision of executive branch agency, including financial arrangements and contracts (e.g., seeking business from agency).
- Thresholds: Even if activity is considered lobbying activity, must meet thresholds (e.g., \$3,000 compensation in Connecticut; 25 hours or \$2,500 compensation in Massachusetts).
- Special issues when lobbying on behalf of an outside client
 - Both placement agent and client have to register in most states
- Placement agent restrictions under public pension fund policies



- Category 1 lobbying (attempting to influence legislation)

Maine

North Dakota

Montana

Oregon

Nebraska

South Dakota

Nevada

Wyoming

- Category 2 lobbying (attempting to influence legislation or rulemakings)

Alaska

New Mexico

Colorado

South Carolina

Hawaii

Utah

Iowa

Vermont

Minnesota

Washington

(as to state actions or decisions)

West Virginia

Wisconsin



- Beyond "traditional" lobbying, trend toward regulation of Category 3 lobbying (including financial arrangements and contracts)

Alabama

Illinois

New Hampshire

Arizona

Indiana

New Jersey

Arkansas

Kansas

New York

California (placement agents only)

Kentucky

North Carolina

Connecticut

Louisiana

Ohio

Delaware

Maryland

Oklahoma

D.C.

Massachusetts

Pennsylvania

Federal

Michigan

Rhode Island

Florida

Minnesota*

Tennessee

Georgia

Mississippi

Texas

Idaho

Missouri

Virginia

* Metropolitan governmental units only



- Some state lobby laws cover local lobbying
 - Alabama, Arkansas, Georgia, Louisiana, Minnesota, Mississippi, Missouri, New York
- Some Florida county lobby laws cover lobbying municipalities within the county
 - Miami-Dade County, Palm Beach County



- In 30 states, grassroots lobbying triggers registration.
- In 6 additional states plus D.C., grassroots lobbying does not trigger registration but if already registered, grassroots expenditures must be reported (Alaska, Florida, Kentucky, Maine, Texas, Wisconsin).



- Direct lobbying
 - Generally, direct lobbying includes preparation for (e.g., research, strategizing, or coordinating lobby activity) and communications with covered officials to influence legislative or executive
 - » Includes strategizing, planning, possibly other background work
 - Education
 - » This is what lobbying is
 - Strategic planning
 - » Strategizing with trade associations, task forces, and others in the industry
 - > Official need not be present, just need purpose to be attempting to influence
 - Must there be pending legislation, rulemaking, or RFP?
 - Ripening of preparation time that does not result in a contact
 - Travel time
 - Subject matter experts
 - Administrative time



- Door-opening
- Discussing legislation or policy at a site visit
 - » If there is an attempt to influence
 - » Prep time counts if purpose was to attempt to influence
- Attending a fundraiser and talking about legislation
 - » Generally, the time spent merely attending a fundraiser does not constitute lobbying. However, one-on-one opportunities to influence legislation should be included.
- C-Suite activity: leveraging activity and managing compliance
- Covered officials
 - » Concept varies widely across states. Some states cover virtually all public employees, unlike the limited federal definition.
- Work performed with the intent that it will be used for lobbying purposes at the time it is created
 - » Can documents created for thought leadership be considered lobbying?



- 3 prongs – general characteristics. All factors not required in grassroots jurisdictions
 - Communication must pertain to legislation being considered or that will be considered in the immediate future, based on objective evidence (not insider knowledge)
 - » Federal, state, or local legislation
 - » Includes initiatives, constitutional amendments, and referenda, but may not include regulatory action
 - » Communication need not refer to specific legislation
 - Communication “takes a view” on legislation
 - » No need for explicit “call to action”
 - Communicated in a form and manner to reach the general public as voters or constituents



- Is communicating with your own employees grassroots lobbying?
- Is a fly-in grassroots or direct lobbying?
- Is addressing a social or broad policy issue unrelated to legislation grassroots lobbying or goodwill advertising?
- Are efforts to influence a ballot measure lobbying?
 - Could also be an in-kind contribution or an independent expenditure, depending on the jurisdiction



- Types of social media communications, expanding lobbying footprint:
 - Direct lobbying
 - » Direct messages
 - » “Tagging” public officials
 - » Emails
 - Grassroots lobbying
 - » Tweets
 - » Likes and retweets
 - » Facebook
- Electronic petitions and form letters
- State regulators are giving increased consideration to social media activity
 - Evolving area



- Contingent fee restrictions under the lobbying laws (e.g., restriction in California, Florida, Massachusetts, New York, and Connecticut).
- Types of compensation that may be permissible under a contingency fee ban:
 - Retainer or flat fee
 - Target-based compensation
 - » This approach has some risk
 - Discretionary bonus
 - » Has to be based on a number of factors
 - » Cannot be formula-based
 - » No dollar of compensation should be traceable to a particular contract



- Civil fines to criminal penalties.
- Losing business in jurisdictions where procurement activity is defined as lobbying.
 - Requirement that company certify in RFP that it is in compliance with lobbying laws.
 - » Mandatory under law in Kentucky and L.A. County.
 - » Matter of practice in Ohio, Florida, and Dade County.



- California incorporates anti-harassment policies into mandatory lobbyist training.
- Georgia requires lobbyists to acknowledge and agree to abide by the General Assembly's sexual harassment policy when they register or renew.
- Illinois requires registrants to undergo sexual harassment training and adopt a harassment policy.
- Maine requires in-person sexual harassment training for lobbyists working in the capitol.
- Maryland mandates that Ethics Commission training cover sexual harassment.
- New Mexico offering voluntary sexual harassment training, with attendance indicated on lobbyist registration forms.
- Effective May 2019, Utah requires lobbyists to complete an anti-harassment course within 30 days of registration or renewal.

State and Local Campaign Finance

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- The landscape for the regulation of state and local political contributions is a varied patchwork of campaign finance laws often coupled with additional restrictions such as (1) pay-to-play provisions, (2) regulated entity prohibitions, and (3) gaming laws.



- 28 states plus D.C. permit corporate contributions:

Alabama

California

Delaware

Florida

Georgia

Hawaii

Idaho

Illinois

Indiana

Kansas

Louisiana

Maine

Maryland

Mississippi

Nebraska

Nevada

New Hampshire

New Jersey

New Mexico

New York

Oregon

South Carolina

South Dakota

Tennessee

Utah

Vermont

Virginia

Washington



- Five states currently permit unlimited corporate contributions (*i.e.*, Alabama, Nebraska, Oregon, Utah and Virginia).
 - Illinois limits for a particular elected office are lifted if IE or self-funding threshold is reached for that particular office.
- The remaining 23 states plus D.C. allow corporate contributions but impose limits.
- Partnerships: each state has different rules on pass-through



- Reporting Requirements

- 17 states require corporations to file reports if they make contributions.

Alaska

Maryland

Ohio

California

Massachusetts

Pennsylvania

Georgia

Minnesota

Rhode Island

Hawaii

Montana

Tennessee

Iowa

Nebraska

Utah

New Hampshire

Washington

- Some of these states are corporate ban states, where the reporting requirement is triggered by ballot measure contributions (e.g., Ohio and Massachusetts).
- Emerging issue: contributions to non-profits, mostly 501(c)(4) organizations, engaging in political spending. This is sometimes referred to as "dark money" because (c)(4)s generally do not disclose political activity. CA passed legislation requiring certain non-profits to disclose activity. In addition, NY, CT, WV, NM, MD have attempted to require 501(c)(4) donor disclosure in certain instances.



- Aggregation among affiliate companies
 - Most states aggregate among affiliates, *e.g.*, Georgia and Maryland.
 - New York does not aggregate among corporate affiliates for purposes of the \$5,000 per corporation limit.
 - » Starting January 31, 2019, LLC contributions are also subject to the \$5,000 per entity limit, and LLC contributions are attributed to its corporate members.
 - California and New Jersey aggregate only if companies do not act independently.
- Aggregation among affiliated PACs
 - Most states aggregate affiliated PACs, *e.g.*, Kentucky and Maine.
- Aggregation among company and its PACs
 - Washington aggregates between company and its PAC.
 - California aggregates if decisions regarding company and PAC contributions are made by the same people.
 - Kansas is an example of a state that does not aggregate between a PAC and a corporation donation made by a connected corporation to the same candidate.



- 22 states generally prohibit corporate contributions:

Alaska

Michigan

Oklahoma

Arizona*

Minnesota

Pennsylvania

Arkansas*

Missouri*

Rhode Island

Colorado*

Montana*

Texas

Connecticut

North Carolina

West Virginia

Iowa

North Dakota

Wisconsin

Kentucky

Ohio

Wyoming

Massachusetts

- *Some of the above states permit corporate contributions to PACs and/or party committees.
- Some states that prohibit corporate contributions to political committees permit contributions to administrative accounts of political party committees (e.g., Texas, Ohio).
- Ballot measure contributions are permitted, even if corporate contributions are prohibited in that state.



- New Jersey – Prohibits insurance companies, banks, utilities and their affiliates, doing business in the state from making contributions "for any political purpose whatsoever."
- Delaware has a ban on insurers, or banks acting as an insurer, contributing to an Insurance Commissioner candidate.
- Several states impose restrictions on lottery or gaming contractors.
- Pay-to-play provisions for entities that are state and local contractors
 - Can prohibit a company from doing business or entering into a contract with a governmental entity if the company or its affiliates, and their PACs, owners, employees, directors, outside consultants, or family members make or solicit political contributions in that jurisdiction to officeholders, candidates, political parties, or other political committees (e.g., PACs)
 - Some jurisdictions cover gifts as well



- If a PAC (including a federal PAC) contributes at the state or local level, it must comply with that state's or locality's law.
- Some states make it easy for federal PACs to give (Ohio and Texas).
- Some states make it difficult or illegal to use a federal PAC (Alaska, Connecticut, Massachusetts, New York, and Rhode Island).
- New York Department of Labor payroll deduction statement and regulation.
- New Jersey payroll deduction restriction.
- Many states do not exempt administrative expenses or certain solicitation expenses. This can, for example, make PAC match impermissible.
 - For example, New Hampshire treats administrative expenses as contributions subject to the \$5,000 per election corporate limit.



- Some states impose burdensome restrictions on PACs.
 - New York treats administrative expenses as contributions that count against the contribution limit, and requires in-state bank account. Transfers exceeding \$1,000 from out-of-state accounts are not permitted.
 - Vermont requires compliance with state limit on what a PAC can receive to \$4,160 per two-year cycle.
- Most states require registration and reporting by the PAC.
 - Some require greater itemization in reports than required under federal law.
- Beware of state and local pay-to-play laws, which may apply to PAC donations.

Solicitation Guidelines for Avoiding Even the Appearance of Coercion in Raising PAC Dollars



- Not a United Way drive.
- No words suggesting that contributing is a condition of employment (e.g., "must contribute" or "expected to contribute").
- Do not imply that contributing will affect opportunity to advance within the company (e.g., do not discuss issues regarding promotions and contributing).
- One-on-one oral solicitations should be avoided except scripted peer to peer.
- Group presentations are permitted (such as at a meeting), but they should be scripted.
- Proper disclaimers need to be prominently displayed in solicitation materials.

Solicitation Guidelines for Avoiding Even the Appearance of Coercion in Raising PAC Dollars



- Follow-up communications (e.g., follow-up call or e-mail)
 - Should not be done to ask if employee has given, and if not, to ask why.
 - May be done to offer assistance or to answer questions that employee may have.
 - Any oral follow-up communication should be scripted.
- May tell employee that it is important to contribute to the PAC given that a strong PAC is vital to the success of the company.
 - Do not characterize the PAC as helping to gain access to candidates.
 - May characterize PAC as helping to elect candidates whose views are good for the company's business interests.
 - Do not say that PAC donations help get laws passed.



- In deciding as to whom to contribute, one should be careful when putting in writing the justification or reason for a contribution.
- To the extent that one puts such justification or reason in writing, one should:
 - Not mention any particular past, present, or future official action (e.g., a vote on a particular legislation or other governmental decision).
 - Not characterize the contribution as helping to gain access to the candidate or a "seat at the table."
 - Limit the writing to general reasons for supporting the candidate (e.g., the candidate's positions on general issues and the leadership positions held by the candidate).



- If a transmittal letter is sent, the following guidelines should be followed:
 - Do not mention any particular past, present, or future official action (e.g., a vote on a particular legislation or other governmental decision).
 - Do not mention any particular official matter (e.g., a particular legislation, rulemaking, or RFP).
 - Limit the letter to merely expressing general support for the candidate.
- Including such explicit information in any form, particularly electronic communications (emails, texts, etc.) creates significant compliance risks.