

POLITICAL PARTICIPATION IN 2020:

Top Legal Concerns for Your Company



CHANGE HAS COME to Washington, D.C. and state legislatures around the country. The fast pace of political changes ushered in during early 2020 can create both challenges and opportunities when it comes to complying with the rules governing corporate participation in the political process.

We've identified a few areas to focus on when reviewing company practices and ways to navigate the most common issues that can arise.

CAMPAIGN FINANCE

Corporations are prohibited from making contributions, including in-kind contributions, to federal candidates and to candidates in many states. Political action committee (PAC) activity, while generally allowed, remains heavily regulated. At the same time, many companies find that it is more important now than ever that they have a political voice in Washington, D.C. and in state capitals. When reviewing an organization's corporate political activity and PAC activity, our attorneys may advise on the following:

EXECUTIVE AND EMPLOYEE POLITICAL ACTIVITIES | Advise corporations and their executives to ensure that executives who host candidate events, or otherwise support candidates, do so in their personal capacities and not as representatives of the corporation or by using corporate resources.

STRATEGIES TO GROW YOUR PAC | Advise on ways to increase PAC contributions or other corporate campaign activity to help clients have a voice in the political process, within the bounds of the law.

SAFEGUARDING PAC FUNDS | Revise PAC bylaws to include adequate safeguards and internal controls that ensure contributions are not being accepted from foreign nationals and to protect against the embezzlement of funds.

CANDIDATE APPEARANCES | Ensure that candidate appearances that are held in corporate facilities, or that utilize corporate resources, take place without making any prohibited contributions to the candidate's campaign.

COMPLIANT PAC COMMUNICATIONS | Review PAC websites, solicitations and other materials to ensure that they are free of coercion, contain the necessary disclaimer language, and comply with other applicable federal and/or state rules.

RESTRICTED CLASS COUNSELING | Evaluate which employees are members of an organization's "restricted class" for PAC solicitation purposes and advise on processes to ensure that those outside the restricted class are not improperly solicited.

REGISTRATION AND REPORTING RULES | Advise organizations on the wide range of registration and reporting rules that may apply if they or their PACs plan to support candidates at the state or local level.

PAY-TO-PLAY RESTRICTIONS

Pay-to-play laws that restrict contributions from government contractors (and, in some cases, their officers, directors or other employees) often have harsh business and legal consequences. Some states, including New Jersey and Connecticut, continue to actively enforce their pay-to-play laws, and Virginia and Maryland are among the jurisdictions that have added or amended pay-to-play laws. We help organizations:

- Understand the current landscape of state and local pay-to-play laws, with a focus on laws that apply to officers, directors or other employees.
- Develop internal policies, controls and communications to ensure compliance with pay-to-play laws in relevant jurisdictions.

LOBBYING REGISTRATION AND REPORTING

The media continue to show an interest in federal and state lobbying disclosure reports, as well as revealing influencers who are not registered or reporting. Several jurisdictions—including New York City and San Francisco—are expanding the scope of activities that trigger registration and reporting requirements. Our attorneys can work with organizations to achieve the following:

- Remain up to date on the latest federal, state, and local laws and regulations regarding the activities that are considered lobbying and the required tracking and reporting of expenses, meetings and contributions on periodic lobbying disclosure reports.
- Develop internal processes to ensure that government affairs employees are accurately tracking lobbying activity and that the organization is not improperly understating its lobbying activity or unnecessarily overstating its activity.
- Represent companies who are confronting inquiries or investigations from federal, state or local lobbying regulators.
- Prepare and file federal, state and local lobbying registration statements and disclosure reports.

ETHICS: GIFT RESTRICTIONS AND OTHER RULES

Organizations may encounter government ethics rules in a variety of situations, including officeholder visits to corporate facilities, policy conferences that the organization sponsors or the hiring of employees who are leaving government service. President Trump recently signed an executive order changing some of these rules for individuals entering or leaving government employment.

Our attorneys review organizations' gift policies, advise on the permissibility of specific gifts to government officials and help organizations understand reporting requirements that might apply when a gift is given to a government official. We regularly provide trainings on these topics for employees, executives and outside consultants. Finally, as talented employees prepare to leave the government and enter the private sector, we can help companies consider the impact of "revolving door" restrictions when hiring new employees out of government agencies.

We also represent and advise companies that may be implicated in federal or state ethics investigations.