

Avoiding State and Local Lobbying Compliance Violations

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Election and Political Law

Corporate legal and compliance departments are usually well aware of the laws regulating lobbying the federal government. Recent news reports, however, indicate that companies have more trouble with state and local lobbying laws. For example, Chicago has recently imposed fines ranging up to \$90,000 for lobbyists and their clients who failed to register under the city law. New York City has also taken a more aggressive stance on enforcement of its lobbying laws. A few features of state and local lobbying make it a tricky blind spot. State and local lobbying law is often more restrictive than at the federal level, and enforcement more rigorous. Lobbying efforts at the state and local level are often less formal than federal work, and less likely to involve professional lobbyists. This all increases the risk of failing to properly register or file lobbying reports, or of running afoul of restrictions imposed on lobbyists. Fortunately, asking a few simple questions can help avoid these headline-grabbing violations.

Is it lobbying?

The first step to avoiding a lobbying offense is being able to identify lobbying before it happens. All 50 states and the District of Columbia regulate lobbying, as do most major cities and many other local jurisdictions. They define lobbying in a wide variety of ways, but generally they include some combination of:

- **Legislative lobbying.** Efforts to influence legislators and legislative staff regarding legislation are regulated in almost every jurisdiction. In some states, lobbying legislative branch officials to influence executive branch action is also covered.
- **Executive or administrative lobbying.** Efforts to influence executive branch officials regarding rules, regulations, licenses, permits, and similar decisions are regulated in most jurisdictions. In some states, lobbying executive branch officials to influence legislation is also covered.
- **Procurement lobbying.** Efforts to influence government procurement decisions are regulated as lobbying, requiring lobbyist registration, in some jurisdictions.
- **Grassroots/Grasstops lobbying.** “Grassroots” and/or “grasstops” lobbying, which involve communicating with the public or influencers to ask them to contact officials, are regulated in some jurisdictions and can trigger registration without any direct contact with the government.
- **Goodwill lobbying.** Attempting to win the “goodwill” of officials, which can include providing gifts, meals, entertainment, receptions, or other items of value—even if no specific legislation or action is targeted—is considered lobbying in some jurisdictions.

Note that in some states, local lobbying is regulated by state law, in others only by local law, and still others by both state and local law.

Does it require registration?

Much like the definition of lobbying, jurisdictions vary widely in their registration and reporting rules, but awareness of a few issues can help avoid violations.

- **Advance registration.** Many jurisdictions require registration in advance of any lobbying. Therefore, it is important to check in advance on whether the activity is lobbying and when registration would be due.
- **Thresholds.** Some jurisdictions require registration for any compensated lobbying. Others have a *de minimis* income or hourly threshold that must be met before registration is required. Even uncompensated lobbying is regulated in some places.
- **Lobbyist/firm/client registration.** Registration by the lobbyist, lobbying firm, or lobbyist's employer/client may be required. In some jurisdictions, it is possible for one person or company to fill more than one of these roles at once.
- **Expiration and renewal.** Registrations might expire and require renewal at the end of the year, the end of a two-year legislative cycle, the end of a legislative session, or never.
- **Reporting.** Once a lobbyist, firm, or client/employer registers, they will likely have to file regular reports of their activity, which can be due anywhere from bi-weekly to annually. The reports might include spending and activity beyond that of the lobbyist herself.

What restrictions does the jurisdiction place on registrants?

Once a person is registered, most states and localities impose some restrictions on their activity. A sampling of the more common restrictions include:

- **Ethics.** Unethical or corrupt methods of influencing decisions, or lying to regulators, is generally prohibited. Many jurisdictions prohibit acceptance of contingency fees for lobbying. This can be a trap for the unwary in the case of procurement lobbying by sales personnel, whose compensation may ordinarily include contingent bonuses.
- **Campaign finance.** Some jurisdictions prohibit or have special limits on how lobbyists may make campaign contributions or otherwise be involved in electoral activity. Sometimes restrictions on campaign contributions or lobbying apply only during the legislative session.
- **Other employment.** State and local laws may prohibit lobbyists from serving on government boards, and may place "revolving door" limits on lobbyists entering government or government employees leaving to lobby.
- **Gifts.** Lobbyists may be subject to special limits on gifts to officials.
- **Donor disclosure.** While rare, some jurisdictions require disclosure of third parties that provide funds to nonprofits and other lobbying organizations.

Lobbying Policies and Training

We recommend that corporations, trade associations, and others engaged in state or local lobbying adopt a formal written policy on lobbying to ensure compliance with all registration,

reporting, and other requirements. While the situation at each company is different, a typical policy will include:

- **Training.** Employees who deal with state or local governments should receive training on a regular basis concerning applicable lobbying laws.
- **Notice requirement.** Employees and consultants should be required to provide notice to a designated compliance point of contact before interacting with government officials on behalf of the company.
- **Prior approval.** Employees should obtain legal or compliance approval before hiring an outside lobbying firm.
- **Time/expense tracking.** Those engaged in lobbying should track activity against registration thresholds and for reporting purposes.
- **Recordkeeping.** Most lobbying laws will require registrants to retain certain records for a period of years.

If you have any questions concerning the material discussed in this client alert or would like to obtain legal advice concerning state and local lobbying compliance, please contact any of the following members of our Election and Political Law practice:

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