

The Six Top Compliance Mistakes by Corporations in an Election Year

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An election year brings ample opportunities for corporations to participate in the political process, and the current political environment can create enormous pressures to do so. But with these opportunities and pressures come legal risks and compliance burdens. Given the differing and complex rules across jurisdictions, companies should be aware of common political law issues that may arise as they get more engaged in the electoral process. Below are common compliance mistakes corporations make in an election year, and tips on how best to avoid them. This article is intended as a general overview; because of the complex nature and number of these laws and rules, it is critical to review each applicable law in detail to ensure compliance.

1. Violating Government Contractor Bans and Other “Pay-to-Play” Laws

A group of laws prohibits contributions from companies that have or seek business with governments. In eagerness to engage in election-year politics, companies often overlook these rules. Advance review of contributions by the company and, in some cases, affiliated individuals and PACs can help reduce this risk.

Federal law bars those holding or seeking federal government contracts from making federal political contributions. The Federal Election Commission’s current position is that this includes contributions to super political action committees (super PACs). Any business considering a contribution to a federal super PAC should check their government contractor status—given the breadth of federal purchasing, all kinds of companies can have federal contracts. Contractors giving to 501(c)(4) “social welfare” organizations should also take steps to ensure that their donations do not indirectly violate this ban. Note that this prohibition covers the federal contractor only and not its PAC or its employees.

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Many states and localities, as well as the Securities and Exchange Commission (SEC), Municipal Securities Rulemaking Board (MSRB), Financial Industry Regulatory Authority (FINRA), and the Commodity Futures Trading Commission (CFTC), have similar laws or rules, often called “pay-to-play” laws. Unlike the federal contractor ban, these *can* extend to the contractor’s PAC, executives, and employees (or even employees’ family members). To comply with these laws, consider a policy that requires covered contributors to pre-clear their contributions with the company in advance.

2. Illegal Corporate Contributions

Many jurisdictions prohibit corporate contributions to candidates, parties, or PACs. Being aware of the rules in the jurisdiction and implementing policies on corporate spending are good risk-mitigation measures.

Subject to some narrow exceptions, federal law prohibits corporate resources from being used to influence elections for federal office. This means that corporations generally cannot make federal political contributions other than to super PACs, and corporate resources cannot be used to support candidates, parties, or PACs (though there are some narrow exceptions). About half of the states similarly prohibit corporate contributions in state elections. Corporations should have policies in place to ensure that their political spending complies with these laws. To avoid this issue, consult with counsel prior to making a contribution from the corporation, hosting a political fundraiser, hosting candidates as speakers or guests, or forming a PAC.

3. Unexpected or Unintended Contribution Disclosure

Corporations making legal contributions and donations in the political process want to know if and how their spending will be disclosed. This requires diligence to be conducted on both the law and the activities of the recipient organization. Despite some public misconceptions, super PACs are required to disclose their contributors. Corporations are increasingly making donations to tax-exempt 501(c)(4) organizations that can engage in some political spending. While these groups tout anonymity to donors and are sometimes called “dark money” vehicles, whether their activities and donors are disclosed can be affected by their activities. Importantly, in some jurisdictions, corporate spending could also lead the corporation itself to have to file registration or disclosure reports.

4. Executive Fundraising Missteps

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Campaigns frequently turn to corporate executives to raise money within their networks. But the rules governing executive fundraising can be convoluted and complex, and training and counsel are helpful to minimize this risk. Executives asked to raise money will naturally turn toward their company and colleagues both for contributions and for support. But doing so can cause issues under the corporate-contribution bans discussed above, as well as implicate prohibitions on coerced or otherwise involuntary contributions. At the federal level, executives generally may fundraise in their corporate capacity using corporate resources only if solicitations are limited to a narrow “[restricted class](#)” of recipients, and subject to other rules. If an executive wants to raise money outside of this restricted class, they may not use any corporate resources. State rules vary widely regarding executive fundraising in state and local races. Executives should be made aware of these rules, and work with counsel to ensure compliance in the event that they are asked to raise money.

5. Missing Election-Year Filing Deadlines

PACs, corporations, lobbyists, and others that have filing obligations related to their political activity should be aware that election years often carry different—and more frequent—filing deadlines than in non-election years. These deadlines can vary widely across jurisdictions as well. For this reason, corporations should reconfirm deadlines for an election year, and institute internal procedures and systems for compliance.

6. Reimbursing Contributions

Nearly all jurisdictions bar contributions that are made “in the name of another,” and this is among the most common criminal violations of campaign-finance law. Expense-system controls and good training can lower the risk of intentional or unintentional violations.

These laws mean that contributions have to be made in the true name of the actual source of the funds. No corporation or any other person can pay for a contribution by an employee or other person, whether via reimbursement, advance, “bonus,” or other funds given with an understanding or view that they will support a past or future contribution. While sometimes this is part of an intentional scheme, other times it is the result of misunderstanding the law—an employee submits a contribution for reimbursement the way they might submit meals or travel costs. Companies should ensure that their expense systems and procedures do not permit the expensing or reimbursement of contributions, and train executives and relevant staff on this rule.