

The ABC's of Federal Political Action Committees

This Q&A summarizes potential benefits and key considerations for companies deciding whether to establish a federal political action committee, commonly known as a PAC.

Why establish a federal PAC?

The first question for a company considering whether to create a federal PAC is, how can it help us? In short, a PAC can help promote a favorable political climate for your company's interests and objectives, and may protect the company and its employees from potential liability. Here are a few reasons why.

First, federal law and the laws of many states prohibit corporations from making monetary or in-kind political contributions. PACs are the only legally-sanctioned way to make political contributions that are directly identified with your company.

Second, PAC contributions can enhance a company's voice in the public arena and provide the company with clout on important issues. Unlike individual campaign contributions, which are usually based on personal preferences or partisanship, a PAC is a vehicle for supporting officeholders and candidates who understand your business and share your company's concerns.

Third, a PAC can channel political activity away from areas of legal risk. When company executives or employees use corporate resources in connection with volunteer fundraising, they may face civil and criminal liability for facilitating a prohibited in-kind contribution. Liability can arise from relatively modest use of corporate resources such as corporate letterhead, stamps and delivery services, or even having an assistant handle RSVPs for a fundraiser held in an executive's home. A corporation, on the other hand, is expressly allowed by law to support PAC activity and defray the PAC's expenses.

How do you start a federal PAC?

Forming a federal PAC requires an initial registration with the Federal Election Commission (FEC). The registration must identify a treasurer (who must be appointed before the PAC accepts any contributions), a custodian of records, and preferably an assistant treasurer to act in the treasurer's absence. It is highly advisable for a PAC to adopt bylaws regarding governance matters, such as how the PAC will decide when to make a contribution and the types of committees (candidate, political party, etc.) to which the PAC may contribute. PAC funds must be segregated from corporate funds. An Employer Identification Number should be obtained from the IRS and used to open a bank account in the PAC's name.

What can we call our PAC?

The official name of the PAC must include the full name of the sponsoring company (called the "connected organization"). The PAC can use a shortened version of its official name on checks and letterhead, but this must be a clearly recognizable acronym or form of the company's name.

How does a PAC decide which officeholders or candidates to support?

Decisions about PAC contributions are usually made by a PAC Board and guided by criteria set forth in the PAC bylaws, such as whether officeholders and candidates share the company's views on public policy, serve as congressional or legislative leaders, represent states or districts where the company has a major business presence, or serve on committees that have jurisdiction over legislation that is important to the company.

Who can contribute to the PAC?

The company or the PAC itself may solicit contributions from certain categories of individuals known as "the restricted class." The restricted class consists of employees who have policymaking, managerial, professional, or supervisory responsibilities, and members of their families; stockholders and members of their families; employees who are members of the recognized professions, such as lawyers, accountants and engineers; and individuals who serve on the company's board of directors so long as they receive compensation other than on an hourly basis.

Twice a year the PAC may solicit contributions from all company employees, but certain rules must be followed. The PAC may also accept unsolicited contributions from any individual who is eligible to make contributions in a federal election (*i.e.*, U.S. citizens or green card holders), and from other PACs.

How much can an individual contribute to the PAC?

Individuals may contribute up to \$5,000 to the PAC per calendar year. The company may authorize contributions by check, automatic payroll deduction, or both. PAC contributions are not tax-deductible for federal income tax purposes.

How can PAC funds be used?

Generally speaking, a PAC may contribute to federal candidates and other federal political committees, pay for the costs (food, drink, room rental, etc.) for a fundraising event for a candidate or other political committee, and fund "independent expenditures" to support or oppose candidates (*i.e.*, a communication that expressly advocates for the election or defeat of a candidate, but is not coordinated with the candidate). Many states permit federal PACs to contribute to state and local candidates, although certain state registration and disclosure obligations may apply.

How much can a PAC contribute to candidates and other political committees?

A new PAC may contribute up to \$2,500 per election to federal officeholders and candidates. Under federal law, a primary, general, special, and run-off are regarded as separate elections. Higher limits apply to contributions to party committees and leadership PACs. Once the PAC has been registered for six months, and has received and made a prescribed number of contributions, it is considered a "multicandidate committee" and may contribute up to \$5000 to candidate per election.

Can the corporation support the PAC?

The corporate sponsor of a PAC may use its general treasury funds to help raise PAC funds; pay administrative expenses in running the PAC, such as bank fees, letterhead, and legal and accounting costs; reimburse the expenses of an officer or employee who hand-delivers a PAC check to a candidate fundraiser; and even offer inducements to contributors, such as raffles, prizes, and charitable matching programs. The corporation, however, is not permitted to contribute company funds directly to the PAC.

Does a PAC have to disclose its receipts and disbursements?

Once registered, a PAC is required to file periodic reports with the FEC, disclosing its receipts and disbursements. A PAC must file all reports and statements electronically if it raises or spends more than \$50,000 in any calendar year, or expects to do so. Below this threshold, electronic filing is optional. All disclosure reports are posted on the FEC's website.

Does the landmark Supreme Court ruling, *Citizens United v. FEC*, change any of the rules for forming and operating a corporate PAC?

No, the *Citizens United* ruling allows corporations to fund ads that support or oppose candidates, so long as there is no coordination with a candidate or candidate's campaign. Corporations and incorporated trade associations remain prohibited under federal law from making contributions to federal officeholders and candidates, leadership PACs, and party committees, except through a PAC.

This fact sheet is intended to provide general information and should not be construed as providing legal advice or legal opinions. Additional information can be obtained by contacting Larry Norton or Jim Kahl, who head Womble Carlyle's Political Law Practice Group.



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