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A Focus on Legal and Legislative
Challenges to Staffing

page 18

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Managing the Risks of Corporate Political Activity

By James A. Kahl

Staffing company owners and executives, like all business leaders, need to keep close tabs on political developments and be confident that their concerns are heard by their elected officials. After all, the decisions by federal, state, and local officials on a host of issues—such as those affecting labor, employment, tax, and immigration laws—can mean the difference between success and failure for a staffing firm.

At the same time, political activities once considered just part of doing business—such as fund-raising for candidates or making personal campaign contributions—can present a high-stakes compliance challenge for staffing companies. Violations can result in substantial fines, intrusive government investigations, criminal liability, and unwelcome headlines.

The solution, however, is not to shy away from political activity that may be integral to your success. Instead, any business with politically active leaders or employees needs to adopt compliance

measures that are tailored to address the specific risks facing the company. New laws are being enacted in Washington and in the states on a regular basis—here are some of the major political law concerns confronting staffing firms today.

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Pitfalls of Supporting Political Candidates

Chief executive officers and other top executives ask their assistants and subordinates to perform a wide range of functions to further company business. So it's

Staffing firms that provide contract personnel to state and local government offices need to come to grips with so-called pay-to-play laws. These state and local laws take aim at perceived abuses in the public contract arena by banning or severely limiting campaign contributions by state and local contractors, their top executives, and, in some instances, the executives' spouses and dependents.

not surprising that some executives ask employees to help plan and organize campaign fund-raising events. Strong political contacts can be a great benefit to a company. The problem is that at the federal level and in many states, this activity can land a company in trouble with regulators.

Under federal law, corporations are banned from contributing to candidates and political parties by providing either monetary or in-kind support. Companies are also prohibited from allowing their resources to be used to support

and raise contributions for candidates (a practice called "corporate facilitation"). When corporate facilitation occurs, the value of the resources and facilities that are used is treated as an illegal in-kind contribution.

What does this mean in the real world? Well, for starters, an employee may not use company letterhead, client lists, shipping company or postage accounts, or copiers to raise, collect, or forward funds from individuals. Corporate officials also are barred from ordering their support staff to plan or carry out a fund-raising event as part of their work responsibilities, unless payment for their services comes from an appropriate source, like the campaign.

While such violations may seem inconsequential, the Federal Election Commission views them seriously and has taken action against corporations and their executives in a string of cases in recent years. One case, which resulted in a \$3.8 million penalty, involved such seemingly innocuous activity as reimbursing employees for cab rides to political fundraisers.

Legal Tactics for Supporting the Industry

Trade associations such as the American Staffing Association can establish political action committees (PACs) that solicit personal contributions from eligible individuals and use the money to support political candidates. The ASA PAC, StaffingPAC, was formed in 1981 to encourage participation in the political process in the interest of its members. Through StaffingPAC, eligible employees of ASA member companies can pool their contributions and, in that way, participate more effectively in the political process.

The PAC administrative fund is a special account, separate from StaffingPAC, that helps ASA defray the cost of PAC fund-raising activities. Unlike StaffingPAC, corporate contributions are allowed. Such

contributions may be deductible as a business expense.

Under federal law, a company may invite an officeholder or candidate to visit the company and speak to its employees. Restrictions apply, however, depending on whether the audience will include only salaried officers and executives or all employees. There are limits on fund-raising activity permitted at these appearances—most important, company officials may not collect and forward contribution checks.

Contributions to candidates, political parties, and PACs also are generally subject to limits, which may be tied to a specific election (such as a primary or general election), an entire election cycle, or a calendar year. During the current federal election cycle, which began Jan. 1, 2009, and goes through Dec. 31, 2010, an individual may contribute \$2,400 to a candidate for the primary election and another \$2,400 for the general election. An individual also has an aggregate limit during the election cycle of \$115,500, of which \$46,500 may be contributed to all federal candidates and \$69,900 to federal PACs and political parties.

New Risks for Staffing Companies With Government Clients

Staffing firms that provide contract personnel to state and local government offices need to come to grips with so-called pay-to-play laws. These state and local laws take aim at perceived abuses in the public contract arena by banning or severely limiting campaign contributions by state and local contractors, their top executives, and, in some instances, the executives' spouses and dependents. The stakes for noncompliance by incumbent and prospective contractors are high. Businesses that violate these laws may face the immediate cancellation of existing contracts, debarment from future contracts, monetary fines, and even criminal penalties.

Pay-to-play laws are complex and vary widely from state to state and city to city.

They may apply to contributions to executive officials and legislators, as well as to officials of quasigovernmental bodies such as commissions and school boards. In addition to the contribution restrictions, some pay-to-play laws require contractors to register and identify all affiliates, employees, and family members who are subject to contribution restrictions. Other laws require bidders and contractors to file reports listing campaign contributions by company employees. A false statement in a disclosure document can result in perjury charges, and errors may lead to fines or disqualification from future work.

Pay-to-play laws have proliferated over the past few years, with about 20 states now having pay-to-play laws at the state or local levels. States with pay-to-play laws include Colorado, Connecticut, Hawaii, Illinois, Kentucky, Maryland, New Jersey, Ohio, and Pennsylvania. Major municipalities with pay-to-play laws include Houston, Los Angeles, New York, Philadelphia, and San Antonio, plus numerous cities and counties in California and New Jersey.

Public contractors may face special lobbying and gift restrictions. A growing

number of states and municipalities treat a contractor's sales professionals as "procurement lobbyists," requiring them to register and file periodic reports. Under some laws, contract bidders can be disqualified if their sales representatives communicate with a government official or employee outside of approved channels or at certain times during the bidding process. Some jurisdictions also impose special gift restrictions or bans on incumbent or prospective contractors.

More to Know

As companies grow and their political activities become more sophisticated, their compliance challenges expand as well. A corporate PAC—a separate fund that can receive employee contributions—can be an effective vehicle for supporting candidates. Corporate PACs have particular reporting and record-keeping obligations, and the company must establish internal controls to ensure that the PAC is run properly. Companies that employ lobbyists to represent them before legislative and executive bodies also must comply with reporting requirements, and gift-giving and other ethics rules.

A well-tailored and ongoing compliance program is *essential* for staffing firms in the current environment. Key employees should be educated about political laws that affect them and the company. Employee manuals should contain policies that identify permissible workplace political activity and inform employees where they can seek guidance. And strong record-keeping procedures should be in place whenever reporting is required. Such attention to compliance can head off problems before they cause trouble for a company. Indeed, the mere fact that a company provides periodic training tends to soften the regulators' stance in assessing punitive action.

Political engagement can be critical to a staffing company's success. Opportunities will abound, particularly in election

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years, for ensuring that political leaders understand the concerns of your company. Don't let avoidable missteps undermine your efforts. ■

James A. Kahl is Of Counsel at the law firm of Womble Carlyle Sandridge & Rice PLLC in Washington, DC, where he advises clients in connection with federal and state campaign finance, lobbying, and government ethics matters. He previously served as deputy general counsel at the Federal Election Commission. To comment on this article, e-mail success@americanstaffing.net.

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