

Key Issues for Corporations and Their Executives: Election, Lobbying and Gift Laws

These days companies of every size and in every industry interact with public officials and candidates. Such interactions—whether involving legislation, the regulatory process, campaign fund-raising, or just a visit by an official to the company plant—can be of enormous benefit to the company's business and its reputation.

While the potential rewards are great, corporations and executives engaged in these activities are subject to a wide range of federal, state and local laws and regulations. Our clients often ask us to help them anticipate risks in these areas. Here are some examples of common scenarios that present “political law” traps for the unwary company or executive:

- **Corporate facilitation of political contributions:** A VP hosts a fund-raising event for a Member of Congress. The event, which will be held in the VP's home, is organized by an assistant, who prepares invitations and handles RSVPs. Invitations are sent on the company's letterhead. The assistant collects checks from executives and sends them to the campaign in an overnight company mailer. In federal elections and in many states, such activity is deemed illegal “corporate facilitation” of campaign contributions. In other words, company resources and staff are used to raise funds from individuals. This is one of the most common campaign finance mistakes made by companies, and the Federal Election Commission has obtained multi-million dollar fines in this area.
- **Pay-to-play laws:** A corporation has a multi-million dollar contract to provide goods to a state university. The spouse of a corporate officer makes a campaign contribution to a candidate for state Attorney General. The contribution may cause the state to terminate the company's existing contract. The company may also be debarred from doing business with the state for a lengthy period and charged with a criminal offense. Such “pay-to-play” laws have proliferated in recent years in states and municipalities across the country, and they may apply to contributions by officers, directors, certain employees—and even family members. These laws present a difficult compliance challenge for companies that bid on and receive public contracts in multiple jurisdictions.
- **Gift rules:** A company buys a table at a fund-raising dinner organized by a major charity. The CEO invites a Member of Congress and a state official to attend the event as a guest of the company. Depending on the jurisdiction, this may be an illegal “gift.”
- **Sales personnel who are subject to lobbying laws:** A salesperson meets a state or local government official to discuss services offered by the company. Even though their conversation doesn't touch on legislation or regulations in any way, some jurisdictions treat this activity as “procurement lobbying,” and may subject sales professionals to the same registration and periodic reporting requirements that apply to lobbyists.
- **Reimbursement of political contributions:** The Senior VP makes the maximum contribution to a candidate for the U.S. Congress and asks other company executives to make contributions. Each employee who makes a contribution is reimbursed through a corresponding increase in his or her annual bonus. Such a conduit arrangement is treated as a “contribution in the name of another,” and can lead to civil and criminal prosecution. At the federal level and in many states, this is also treated as a prohibited corporate contribution.

- **Coercion of political contributions:** The COO sends an e-mail to all management employees, urging them to make political contributions to an officeholder who has been a strong supporter of the company. The e-mail states that each employee is expected to contribute to the officeholder's campaign and that employees must notify the COO's assistant when they have made a contribution. A disgruntled employee later files a complaint with the Federal Election Commission, which investigates the company for violating the federal law against coercing political contributions. Since coercion violations usually take place in the workplace, it is not unusual to see them in conjunction with corporate facilitation violations.

When these kinds of violations come to light, companies and their executives face not only civil and criminal prosecution, but also media scrutiny and harm to reputation. Corporations should adopt and communicate policies and procedures, provide training for key personnel, and establish a process for pre-approving political contributions, gifts and other interactions with government officials. In the event of an investigation, an effective compliance program is the company's best protection.



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