



Compliance Connections

Helping You Avoid Ethics, Lobbying & Campaign Finance Pitfalls

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Top 10 questions about political activity in the corporate workplace



By Amanda M. Grandjean

With the 2016 election quickly approaching, corporate employers are asking many questions about what they and their employees can and cannot do to participate in the electoral process. Both state and federal law prohibit corporations from using company resources to support a partisan political effort, except in very limited circumstances. While employers must take steps to ensure that corporate resources are not improperly used for political activity, they cannot interfere with an employee's First Amendment rights and their right to voluntarily participate in the electoral process. The following is a cursory list of some of the most commonly asked questions about employee participation in elections.

1. Can we let an employee distribute candidate literature at the office?

Generally, no. Corporations cannot use corporate resources to support a partisan effort, except in very narrow circumstances. Allowing employees to campaign on company time and on company grounds can violate the law and subject the company to penalties and fines.

2. What about Citizens United? Aren't corporations now permitted to freely engage in political activity?

The U.S. Supreme Court's ruling in *Citizens United v. FEC* allows corporations and labor organizations to use treasury funds to make independent expenditures in relation to federal elections and to fund electioneering communications. However, the ruling did not affect the prohibition against coordinated corporate contributions to candidates.

While independent corporate expenditures are now permissible, federal and state laws still prohibit corporations from making a "coordinated" expenditure, or one that is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents, or a political party committee and its agents. Corporations that make independent expenditures must disclose them and follow the federal and state reporting and filing requirements.

3. Can we suggest that our employees make contributions to a specific candidate who is especially supportive of our industry?

No. Employees should not be coerced or enticed in any manner to make a political contribution. Employers should be very careful not to threaten or reward any employee for his or her support of any candidate, party or ballot issue. Employees may

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make voluntary contributions to a political cause from their own personal funds.

4. It is critical to our business to get our current representative re-elected. Since this is a legitimate business need, can we reimburse our employees for any political contributions they voluntarily make to this candidate?

Absolutely not. Both Ohio and federal law prohibit making campaign contributions through another person or entity. Moreover, corporations are prohibited from giving money, items, personnel, space or anything of value to (1) candidates; (2) non-ballot issue political action committees (PACs); (3) legislative campaign funds; (4) state candidate funds of a political party; or (5) a general fund of a political party.

5. Can we put information about voter registration or absentee ballots on the company website?

Yes. As long as the information is strictly nonpartisan and distributed in an unbiased manner, companies can provide voter education information to their employees.

6. Can our company support the local school levy?

Yes. An exception to the corporate contribution ban allows corporations to participate in nonpartisan ballot issue campaigns, such as a school levy or a statewide ballot issue. Making financial contributions, distributing literature prepared by a ballot issue campaign, allowing employees to help during work hours, or other direct or in-kind support is permitted. Employers should be careful that the activity is truly nonpartisan and should be aware that Ohio law requires corporations to disclose their ballot issue activity to election authorities.

7. Can we place literature or a poster about a state or local ballot issue in our company's public lobby for our customers and clients to see?

Yes. In addition to the guidance given above, be sure that the literature has a disclaimer and is truthful. If an employer issues or distributes any publication in support of a ballot issue committee, that publication must include, in a conspicuous place, the appropriate disclaimer. And even though the "false statements" laws have been declared unconstitutional, falsely identifying the source of a statement, issuing statements under the name of another without authorization or falsely listing an endorsement are violations of campaign finance law. Not to mention, false statements have the potential to cast a negative light on your business.

8. Can we put a yard sign in our company window supporting a state or federal candidate?

Ohio law has a specific exception to allow corporations, nonprofit organizations and labor organizations to place campaign signs on their property. Because federal law is not so clear, we encourage caution with federal candidate signs. The Federal Elections Commission will generally defer to the corporation's internal policy regulating signs supporting federal candidates on corporate property but has not issued anything formally on the matter.

9. A candidate wants to come to our facility for a visit. Can we permit this?

Yes. A candidate may come to a corporate facility for a visit, as long as there is no fundraising or campaigning at the facility. However, if a campaign wishes to use the corporate facilities and resources, the

campaign must reimburse the corporation within a commercially reasonable time and at the usual and normal rental price. This means that the campaign must reimburse the corporation if, for example, a campaign uses corporate telephones, computers or office furniture.

If the business has a corporate PAC, the PAC can host a fundraiser for the candidate. But, the PAC must be careful that it (or the candidate's campaign) covers the cost of the event and that invitations are handled carefully and in compliance with the law.

10. Are we required to give employees time off work to vote?

Not necessarily. Ohio law prohibits any employer from interfering with an employee on Election Day and requires that they be given a "reasonable amount of time" to vote. This does not mean that every employee must be given paid time off work to vote. Most employees should be able to vote before or after work, but additional considerations may be needed in cases where the employee's polling location is far from work or the employee works an extended shift.

This article has been prepared as a general reference document for informational purposes. Public agencies and nonprofit organizations face additional restrictions that are not addressed here. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately and possibly with involvement of legal counsel.

Bricker launches Compliance Connections blog

If you like what you're reading in this quarterly newsletter, we encourage you to visit our new Compliance Connections blog featuring news alerts, original articles and helpful tips regarding ethics, lobbying and campaign finance compliance. To have frequent updates sent directly to your inbox, [subscribe to the blog via FeedBurner](#). Additionally, be sure to visit the blog and bookmark the site for easy reference.

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Most common mistake made by corporate PACs: Giving in the name of another



By Maria J. Armstrong

In a rare moment, two commissioners on the Federal Election Commission (FEC) agreed on the answer to a question posed during a recent seminar about corporate political activity. The question: What common mistake by corporations is most likely to result in FEC sanctions? The answer: Giving in the name of another.

Federal law and the laws of many states, including Ohio, specifically prohibit a person from making political contributions in the name of another. Yet many corporations still reimburse employees for political contributions, provide bonuses for political activity, or otherwise communicate that an employee's salary is intended to be sufficient enough to permit the employee to be politically

active. FEC Chairman Matt Peterson and Commissioner Ellen Weintraub both noted that this type of activity was surprisingly prevalent and was being committed by corporate officers who simply did not understand that it is illegal.

To be clear, state and federal law prohibit funneling campaign contributions through another person or entity. The offense is compounded when corporations are involved because corporate funds cannot be used for political support, either directly or indirectly.

Penalties can be significant. At the FEC, penalties can range from 300 to 1,000 percent of the amount of the illegal contribution. Criminal penalties can include significant felony convictions and the possibility of serious

prison time. Ohio law provides for a monetary penalty of up to \$10,000, potential forfeiture of office if a candidate was the perpetrator, and possible criminal sanctions.

Corporations that value political involvement by their employees should carefully examine the applicable laws and implement strict policies that protect an employee's First Amendment rights to be politically active without crossing the line into activity that might constitute making a contribution in the name of another. Such corporations should also strongly consider setting up a political action committee, which can achieve the same corporate goal of being politically active and, if operated correctly, can do so in a legal manner.

HELPFUL TIPS

When writing a contribution check to a political party, trade association PAC or other political committee with multiple accounts (state, federal judicial, etc.), it is a best practice to designate the specific account to which your contribution applies. Otherwise, the recipient can allocate your contribution to a fund that you did not intend.

Ordering PAC checks? Ohio law requires that your Ohio PAC number be included on contribution checks. Federal law requires that multicandidate status be disclosed in writing with a contribution. Having this information printed on your checks, if applicable, will help you stay in compliance with these laws.

What went wrong? “I hate myself”



By Maria J. Armstrong

The chairman of the Board of Commissioners of the Port Authority of New York and New Jersey should have realized he was in trouble when he and the lobbyist for United Airlines teamed up to make the chairman's trip to his vacation home in South Carolina more convenient. The lobbyist asked his client to resume non-stop flight service between the Newark and Columbia airports specifically for the chairman. United refused, but the lobbyist kept up the pressure.

About a month later, the lobbyist called and asked the chairman to intervene in a matter

before the port authority that was important to United. Leaving a trail of emails behind, the chairman responded, “Yes, it's already off this month's agenda: I hate myself.” The lobbyist replied: “Finally have their attention. Having item off/on this week worked.” Just a few months later, United reinstated a direct flight based on the chairman's preferred travel schedule to South Carolina.

When the scheme unraveled, the chairman plead guilty to bribery and, under the terms of his plea agreement, faces up to 24 months in prison when he is sentenced this December.

United agreed to pay a \$2.25 million penalty and institute an enhanced compliance program designed to prevent and detect bribery and corruption violations in exchange for not being charged criminally for its role in the scheme. United's CEO resigned. Charges of conspiring to commit bribery are still pending against the lobbyist.

So what went wrong? No one listened to the voice inside their heads... “I hate myself.”