

November 8, 2018

**Comprehensive NY State Lobbying Regulations Take
Effect in January 2019**

The NY State Joint Commission on Public Ethics (JCOPE) is charged with enforcing the New York State Lobbying Act. Organizations that are registered with JCOPE as a lobbyist or client should be aware of new, comprehensive lobbying regulations that go into effect January 1, 2019. This memo identifies some steps that nonprofit organizations registered with JCOPE should consider taking to comply with the new regulations.

1. Lobbying in a coalition: If two or more organizations pool money for the primary purpose of lobbying, JCOPE considers them to be a “coalition” subject to new reporting rules.ⁱ Such organizations should review the new rules, consult counsel, and come up with a plan to comply. For more information, see our factsheet, [NY State Lobbying Disclosure Rules for Coalitions](#).

2. Lobbying via social media: A social media post asking a public official to take specific action regarding legislation, agency rules or the other official actions will constitute direct lobbying if it is directed at a public official’s account. Social media, like other forms of communication, will constitute grassroots lobbying if it asks the *readers* to lobby a public official to take a specific action regarding a piece of legislation, agency regulation, etc.ⁱⁱ For more information, see our factsheet, [How Do NY State Lobbying Disclosure Rules Apply to Social Media?](#)

3. Lobbying by board members and officers: An organization that is a registered lobbyist or client must report any lobbying that its board members and officers conduct on the organization’s behalf, even if the lobbying is uncompensated.ⁱⁱⁱ Nonprofit organizations that are registered as a lobbyist or client should educate their board members and officers about these new rules and implement a protocol for them to track and report their lobbying. For more information, see our factsheet, [Obligations of Directors, Officers and Managers of Organizations That Register to Lobby](#).

4. Lobbying by other volunteers: Aside from board members and officers, lobbying by other types of volunteers does not have to be reported. For instance, volunteers and uncompensated members who attend a Lobby Day do not have to be reported on your filings. However, an organization that is a registered lobbyist or client will have to report any expenses that it incurs in connection with the volunteers’ Lobby Day participation, such as transportation, food, banners, etc.^{iv}

5. Arranging lobbying meetings for other people to attend: It is now lobbying to arrange for someone else to meet with a public official, if you know that the other person is going to lobby at the meeting. However, a person who acts in a purely administrative capacity to schedule a meeting does not have to be listed as an individual lobbyist. Instead, the time spent setting up the meeting can be reported by the lobbyist who asked for the meeting to be set up.^v

6. Simply providing information: It is not lobbying to attend a meeting with a public official to simply provide technical information without playing a role in lobbying strategy. This is true even if other people engage in lobbying at the same meeting.^{vi}

For more information about the obligations of nonprofit organizations that lobby, see Lawyers Alliance's [FAQ's About Nonprofits and Lobbying](#).

This alert is meant to provide general information only, not legal advice. Lawyers Alliance staff are available to help qualified nonprofits with their business, transaction and compliance legal needs. Please contact Senior Policy Counsel Laura Abel, (212) 219-1800 x283, label@lawyersalliance.org, or visit www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to develop and provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.

ⁱ 19 NYCRR § 943.9(h)(3).

ⁱⁱ 19 NYCRR § 943.6(c), 943.7(f).

ⁱⁱⁱ 19 NYCRR § 943.3(g).

^{iv} 19 NYCRR § 943.6(b)(4).

^v 19 NYCRR § 943.6(a)(2) & (b).

^{vi} *Id.*



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Legal Alert: NY State Lobbying Disclosure Rules for Coalitions

If two or more organizations pool money for the primary purpose of lobbying, NY's Joint Commission on Public Ethics (JCOPE) now considers them to be a "coalition" subject to new lobbying reporting rules.¹

What obligations do a coalition and its members have?

A "coalition" that spends \$5,000 or more in a calendar year on lobbying has two choices:

Option 1: Coalition reports

The coalition registers as a lobbyist or client, identifies a responsible party, and discloses all members that spend \$5,000 or more to lobby through the coalition or otherwise. Under this option:

- Coalition members do not need to report their contributions to the coalition on their lobbyist or client reports.
- An individual member that spends and receives less than \$5,000 for lobbying without counting contributions to the coalition does not need to register or report as a lobbyist or client. This makes the coalition reporting option particularly attractive to organizations that make a large contribution to a coalition for the primary purpose of lobbying.
- A coalition can use a JCOPE-provided survey to find out which members it needs to report.

This rule **does not apply** to groups that:

- don't pool money;
- pool money for a primary purpose other than lobbying;
or
- have a parent/subsidiary or national/regional relationship, or are subsidiaries of the same parent.

Option 2: Members report

If the coalition does not register as a lobbyist or client, then each member that spends \$5,000 or more to lobby through the coalition or in some other manner must disclose in its lobbyist or client report the name of the coalition and amount of all contributions to the coalition. Under this option:

- The coalition itself does not need to track or disclose its members' contributions. Instead, each member is responsible for its own compliance.
- A member must register and report as a lobbyist or client if its total lobbying expenditures exceed \$5,000, even if all or most of those expenditures are made through the coalition.

¹ 19 NYCRR 943.9(h)(3).

What types of activities count as lobbying?

The NYS Lobbying Act defines “lobbying” as an attempt to influence actions by state, county and municipal legislators and agency officials in New York State, in connection with:

- legislation (and the introduction of legislation) – budget legislation and discretionary funding included in the budget count!
- agency rules, regulations, actions having the force of law, procurement, and ratemaking
- approval or veto of any legislation by the governor
- Executive order by Governor or Mayor
- tribal-state agreements.²

Where can I find more information about the obligations of organizations that lobby?

Lawyers Alliance’s [FAQ’s About Nonprofits and Lobbying](#) is available on our website.

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² N.Y. Leg. Law § 1-c(c).



November 8, 2018

Legal Alert: How Do NY State Lobbying Disclosure Rules Apply to Social Media?

Under New York State law, an organization or individual that spends or receives at least \$5,000 in a calendar to lobby must register and report as a lobbyist and/or client. The NYS Lobbying Act defines “lobbying” as an attempt to influence actions by state, county and municipal legislators and agency officials in New York State, in connection with:

- legislation,
- agency rules, regulations, actions having the force of law, procurement, and ratemaking,
- an executive order of the Governor or a mayor, and
- tribal-state agreements.ⁱ

Social media & direct lobbying

A social media post asking a public official to take specific action regarding legislation, agency rules or the other actions listed above will constitute direct lobbying if it is directed at a public official’s account. This could happen, for instance, if the public official’s @username is included in a Twitter post, or if an organization posts on the public official’s Facebook page. However, a social media post that merely names a public official is not necessarily direct lobbying. Likewise, your social media posts do not automatically count as lobbying merely because a public official “follows” or “subscribes to” your social media account.ⁱⁱ

LOBBYING

@SenSmith Pass the Ethics in
Government Act now!

Social media & grassroots lobbying

Social media, like other forms of communication, will constitute grassroots lobbying if it asks the *readers* to lobby a public official to take a specific action regarding a piece of legislation, agency regulation, etc. This “ask” is known as a “call to action.”ⁱⁱⁱ

LOBBYING

Call Senator Smith and tell him: pass the Ethics
in Government Act now!

A social media post that is not directed to a public official’s account and does not contain a call to action is not lobbying.

Social media posts on employees' personal accounts

An employee's posts on her own social media account will count as lobbying by her employer if she is making the post in the course of her employment. If the posts are part of a coordinated, mass social media campaign by the employer, each employee who participates in the course of her employment does not have to be listed as an individual lobbyist, but the employer must still report the time spent coordinating the campaign and making individual posts.^{iv}

Costs of social media lobbying campaigns

Here are some expenses you may need to count towards the cost of a social media lobbying campaign: social media consultant, sponsored posts, staff time planning and posting, search engine optimization, and advertising.

- ***Practical tip: Keep track of your organization's social media campaigns aimed at persuading particular government actors to take particular actions, but you don't have to track and record each post.***

Most social media posts involve minimal expenditures. If a post constitutes lobbying, a lobbyist must report the public official who is targeted and the bill, regulation or other action that is the subject of the lobbying, and use a "reasonable methodology" to calculate expenses related to the post.^v

However, there is no requirement to track the minutes spent on each individual post.

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ⁱ N.Y. Leg. Law § 1-c(c).

ⁱⁱ 19 NYCRR 943.6(c).

ⁱⁱⁱ 19 NYCRR 943.7(f).

^{iv} 19 NYCRR § 943.6(c)(3).

^v 19 NYCRR § 943.6(c)(4).

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**Obligations of Directors, Officers and Managers of
Organizations That Register to Lobby**

If an organization is registered as a lobbyist with New York State or New York City, its board members and senior managers have specific reporting and compliance obligations.

1. **Organization Must Report Lobbying by Board Members:** NY State and NYC require an organization that is a registered lobbyist or client to report any lobbying that its board members conduct on the organization's behalf, even if the lobbying is uncompensated.¹
2. **Reportable Business Relationships:** Board members and executive management of an organization registered as a lobbyist with NY State (and of clients of such registered lobbyists) must disclose reportable business relationships.²
3. **Gift Ban**
 - a. **NYC:** In addition to lobbyists and their relatives, NYC's ban on gifts from lobbyists applies to the officers or employees of a lobbyist organization "who engage in any lobbying activities or who are employed in such lobbyist's division that engages in lobbying activities and the spouse or domestic partner and unemancipated children of such officers or employees."³ NYC's gifts ban does not apply to gifts from clients of registered lobbyists.
 - b. **NYS:** NYS' ban on gifts from lobbyists and clients applies to any officer or employee of an organizational lobbyist or client "who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization."⁴ It also applies to the spouse or unemancipated child of such individual if: a) it is reasonable to infer that the intent of the gift was to influence a public official to reward official action, or b) the gift could reasonably be expected to influence the official's performance of official duties.⁵
4. **Contributions to Candidates for NYC Office:** Contributions by NYC-registered lobbyists to NYC political campaigns are not matched by the NYC Campaign Finance Board and are subject to lower contribution limits than other individuals. If the lobbyist is an organization, this includes contributions by any officer or employee of such lobbyist who engages in lobbying activities of the organization or is

¹ 19 NYCRR 943.3(g); NYC Clerk Advisory Op. 2012-1, <http://www.cityclerk.nyc.gov/html/lobbying/2012-1.shtml>.

² 91 NYCRR § 943.14(b)(3).

³ NYC Admin Code Title 53, § 1-16(b).

⁴ NY Legis. Law §§ 1-e, 1-m.

⁵ 19 NYCRR 934.3(b).

employed in an organization's division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees. It is unclear whether it also includes the CEO, CFO and/or COO, and any person employed in a senior managerial capacity, which is defined as "a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals."⁶

5. **Political Fundraising for NYC Candidates:** The requirement to report political fundraising performed for a candidate for a NYC office applies to registered lobbyists, any officer or employee of an organizational lobbyist who actually engages in lobbying, and any officer or employee employed in an organization's division that engages in lobbying. It also applies to the spouse or domestic partner and unemancipated children of such officer or employee.⁷
6. **Paid Political Consulting for NYC Candidates:** The requirement to report paid political consulting performed for a candidate for a NYC office applies to registered lobbyists.⁸ It does not appear to apply to officers, directors or employees of a lobbyist organization who do not themselves engage in lobbying.

Note: the only requirements discussed here that apply to *clients* of registered lobbyists are:

- NY State's Reportable Business Relationships disclosure requirement,
- NY State's ban on gifts to public officials, and
- NYS and NYC's requirement to report volunteer lobbying by board members on the organization's behalf.

Therefore, an organization could avoid subjecting its non-lobbying directors, officers and employees to all other requirements by having each employee who lobbies register separately as a lobbyist, in lieu of registering the organization itself. The downside of such approach is that each lobbyist would have to pay a separate registration fee and file separate bi-monthly reports.

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⁶ NYC Campaign Finance Law §§ 3-702(3), (16), 3-703(1-a), available at <https://www.nycclfb.info/law/act/>

⁷ NYC Admin. Code § 3-211(h).

⁸ NYC Admin. Code § 3-211(i).

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