

January 6, 2021

New NY State Lobbying Reporting Rules Take Effect

New York's state lobbying regulator, known as JCOPE, has issued new lobbying regulations that take effect as of January 2021.¹ This legal alert highlights several aspects of the new regulations that are particularly relevant to nonprofit organizations that use their own staff to lobby.

Coalitions

In the regulations and an accompanying "Coalition Filing Requirements" guidance,² JCOPE now distinguishes between two types of coalitions, each of which has its own reporting requirements:

- **a coalition that has a name and an individual designated as President, Treasurer etc.** – JCOPE calls this a "Structured Coalition," and if the coalition spends \$5,000 or more on lobbying in a calendar year the coalition itself must file lobbying reports. Coalition members are not required to report the coalition's lobbying on their own reports, and their contributions to the coalition do not count towards each member's \$5,000 lobbying expenditure threshold.
- **a coalition that has a name but no individual designated as President, Treasurer etc.** – JCOPE calls this an "Unstructured Coalition." This type of coalition does not file its own lobbying reports. Instead, any members that spend \$5,000 or more on lobbying in a calendar year file their own reports, and on those reports they report each of the following as an "expense" paid to the coalition: donations of money to the coalition, expenses incurred on behalf of the coalition, or donations of staff time to the coalition. These coalition-related "expenses" also count towards each member's \$5,000 lobbying expenditure threshold.

These coalition reporting rules are new, and nonprofits are likely to have many questions that are not answered by the new regulations. For instance, there is not necessarily a clear line between lobbying that an organization does on its own behalf in coordination with an unstructured coalition (which it could report as its own expenditure), as opposed to lobbying on behalf of the coalition (which it would report as an expense paid to the coalition). If you have questions about how these new rules apply to your coalition work, you can contact JCOPE's attorney of the day at Legal@jcope.ny.gov or by telephone at 800-873-8442 (select option 2).

¹ The new regulations are available at <https://jcope.ny.gov/proposed-regulations-and-guidance>

² 19 NYCRR sec. 943.9(h)(3); JCOPE, "2021-2022 Coalition Filing Requirements," https://jcope.ny.gov/system/files/documents/2020/12/2021_2022-coalition-filing-requirements-final-12.2.20.pdf

Which Employees Must Be Listed as Lobbyists

An organization lobbying on its own behalf does not need to list an employee as an individual lobbyist solely because the person conducts grassroots lobbying on behalf of the organization or lobbies via the organization's social media accounts.³ However, the organization may still need to report lobbying activities and expenditures associated with those grassroots lobbying activities.

Examples:

Don't list employee as individual lobbyist

Neighbors' Food Bank is a registered lobbyist. NFB's communications director Francisco Jimenez posts on the organization's Twitter account asking Senator Jones to support increased anti-hunger funding in the state budget. He also emails the organization's supporters to ask them to contact Senator Jones with the same request. If this is the only lobbying Francisco does on behalf of the organization, NFB's lobbyist registration does not need to list him as an individual lobbyist. However, NFB may still need to report: a) the compensation that NFB pays Francisco to create the post, b) any expenses associated with the post (such as purchasing an ad to boost the post), and c) lobbying subjects, targets and activities associated with the post.

 @SenJones please support anti-hunger funding in the state budget!

Dear Friends,
Please call Sen. Jones to ask him to push for more anti-hunger funding in the budget.
-Francisco

List employee as individual lobbyist

On the other hand, if Francisco emails or calls Senator Jones to ask him to support increased anti-hunger funding, NFB's lobbyist registration must list him as an individual lobbyist.

From: Francisco@nfb.org
To: SenJones@SenJones.com
Re: State Budget

Dear Sen. Jones,
NFB is counting on you to push for more anti-hunger funding!
-Francisco

Personal social media accounts

Under the new regulations, employees' use of their personal social media accounts for lobbying is attributable to (and reportable by) the organization only if the person "is specifically retained by a Client for such Social Media activity."⁴ This appears to cast a narrower net than the old regulations, which required an employer to report employees' use of personal social media accounts for lobbying if the social media activities were conducted in the course of the person's employment.

³ 19 NYCRR secs. 9436.(d), 943.7(d).

⁴ 19 NYCRR secs. 943.6(d), 943.7(f).

Changes to the online reporting system

JCOPE has made a number of changes to its online lobbying reporting system. For instance, registered lobbyists have been asked to verify their email accounts, and filers will have to enter more detailed information regarding expenses. JCOPE's e-mail blasts and other guidance documents regarding the new changes are available at <https://jcope.ny.gov/jcope-latest>

Lawyers Alliance's educational offerings for nonprofit organizations that lobby are available at <https://lawyersalliance.org/advocacy>. JCOPE also provides a wide variety of fact sheets and trainings, which can be accessed at <https://jcope.ny.gov/>.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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