

January 6, 2021

How Do New York 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

Organizations’ Own Social Media Accounts

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!

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.

NOT LOBBYING

Senator Smith should pass the Ethics in Government Act now!

Who must be listed as an individual lobbyist

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

Employees' personal accounts

An employee's use of her 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."^v This appears to cast a narrower net than regulations in effect prior to 2021, 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.

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

Lawyers Alliance's educational resources for organizations that lobby are available at <https://lawyersalliance.org/advocacy>

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ⁱ N.Y. Leg. Law § 1-c(c).

ⁱⁱ 19 NYCRR 943.6(d).

ⁱⁱⁱ 19 NYCRR 943.7(f).

^{iv} 19 NYCRR 943.6(d)

^v 19 NYCRR 943.6(d), 943.7(f).

^{vi} 19 NYCRR 943.6(d), 943.7(f).