Updates
September 05, 2017
CEOs, Politics and the Law: Guidelines for a New Era in Corporate Social Speech

In recent weeks, America's CEOs have spoken out on social issues like never before, placing the business community firmly within the national debate. Likewise, companies are feeling internal and external pressures to communicate a message of social responsibility to their employees and customers. As the voice of business becomes a prominent one in the political and social debate, understanding how the law both supports and restricts executive and corporate political activity can prevent a misstep or distraction from the social message that a company wishes to convey.

First Steps Into the Political Fray

Most activity by CEOs and for-profit corporations that has been publicly reported on in recent weeks does not implicate the broad range of political laws—that is, campaign finance, lobbying disclosure, government gifts and ethics, and pay to play laws—that govern corporate political activity.

Individual CEOs and the corporations they lead enjoy a certain amount of leeway under these laws and the First Amendment to express views on social issues, criticize or support the statements of elected leaders, and engage with employees and customers to meet new social and political expectations. In many cases, legal protections apply whether a CEO is communicating on behalf of the company or in their own personal capacity; whether the statements are made on social media or more traditional platforms; and whether the communication is aimed at employees, government officials or the public at large.

However, corporate America's newfound prerogative to be a platform for societal change does not go unchecked by federal and state regulation. As described below, identifying the difference between unregulated activity and activity that is restricted or subject to public disclosure is essential to helping CEOs and corporations find and amplify their political voice.

Speaking Out on Policy Issues

In recent weeks, CEOs have increasingly become a vocal and trusted source of information on public issues. Under the law, these executives and other employees have the right to express their personally held views on policy debates, pending legislation and the latest actions of their elected government officials.

When such activity crosses the line from individual speech to speech on behalf of the corporation, however, additional caution is warranted. While all jurisdictions permit companies to attempt to lobby elected officials and influence policy outcomes, such activity can be heavily regulated. As recent enforcement actions in Chicago and other locations demonstrate, CEOs who personally lobby government officials on behalf of their companies could unwittingly put the companies at risk of fines and other legal penalties for violation of local lobbying disclosure requirements. Taking the relatively straightforward step of understanding the lobbying regulations in advance can prevent both legal penalties and reputational harm. Corporations, too, should understand the disclosure obligations that apply when they spend money to influence policy outcomes or call upon employees to take a position on local issues.

The 2018 and 2020 Elections Approach

Corporate CEOs—like their employees and any other member of the public—have the right to support political candidates, make personal political contributions and even host fundraising events for politicians in their homes. Federal campaign finance law, for example, allows individuals to spend up to $1,000 on certain expenses to host events in their homes benefitting federal candidates without the cost of the event being considered an in-kind contribution to the campaign.

Executives must be careful, however, not to marshal any corporate resources when hosting an event or volunteering for a candidate, political party or PAC. Federal campaign finance law places tight restrictions on the use of corporate equipment, invitation lists, subordinate employees or other resources in furtherance of an executive's or employee's personal political activity. The fact that President Trump has already filed paperwork declaring his candidacy for reelection in 2020 means that counsel should monitor and advise on executives' statements and activities regarding the 2020 election, in addition to the upcoming 2018 midterm elections.

While corporations themselves remain prohibited from making political contributions to federal candidates, there are a number of other ways for a corporation to speak its political mind on candidates and elections. Under various circumstances, corporations and their executives can, for example:

- establish and support a corporate PAC;
- send messages supporting or opposing federal candidates to certain executive and administrative employees;
- host fundraisers for federal candidates on corporate premises;
- engage employees in voter registration and "get-out-the-vote" drives; and
- make public endorsements of federal candidates.

Corporations can also make contributions to help pass or defeat state and local ballot initiatives. These rules—along with rules for corporate activity with state and local candidates and PACs—vary widely across jurisdictions.

Engaging in these election-related activities with a solid understanding of the applicable political law regulations can provide CEOs and companies a powerful outlet to convey their social values and support the election of candidates who are champions for their industries.

Moving the Discussion Offline

As the role of CEOs in the public sphere expands, executives may welcome opportunities to engage with elected officials face-to-face. The chance to interact on a personal basis with officials—or even invite officials to company offices for a discussion with a wider group of employees—can often be easily achieved if there is advance planning around travel, lodging, meals or other benefits provided to the public official or the official's campaign. Companies should also understand the purpose and goals of such meetings in advance to ensure campaign finance, lobbying or other ethics laws do not stand in the way of executing an event that can be vital to the company's ability to express its values and affect change.

Political Activities Policy

This update only touches on the campaign finance, lobbying and government ethics laws that could unexpectedly sidetrack the efforts of a company or its CEO to have a voice in the political or social debate.

Having an up-to-date Political Activities Policy as part of the company's Code of Conduct is one way to ensure executives and employees are operating from the same political playbook. A well-crafted Political Activities Policy signals to employees that their own personal, volunteer political activity is supported and even encouraged, but also establishes limits on engaging in such activities with the impermissible use of company resources or in a way that the employee appears to be acting on the company's behalf.

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