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Federal & Massachusetts Reporting and Registration Requirements Related to Lobbying Activity

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When not-for-profit organizations think about getting involved in the political process, one of the first concerns is avoiding any activity that may jeopardize their tax-exempt status. Those questions are addressed in the KLR whitepaper on [Political Campaign Activity and Lobbying for a 501\(c\)\(3\) Organization](#) which describes the lobbying limitations imposed on tax-exempt organizations by the Internal Revenue Code. If, after reading that whitepaper you begin to engage in permitted lobbying activities, you should also be aware of the Federal and Rhode Island reporting and registration requirements that accompany this activity.

Compliance with laws and regulations is a legal matter and KLR is not engaged in providing legal services. This whitepaper is meant only to inform the reader and you are encouraged to seek legal assistance for answers to specific questions.

The first distinction to draw is the difference between lobbying activities conducted by your employees and those conducted by professional lobbyists that you pay to lobby on your behalf. Registration and reporting requirements will be applicable to activities (beyond a certain threshold) conducted by your employees. However, activities engaged in by your paid professional lobbyist will be reported by that lobbying firm. The combined cost of each, however, enters into the calculation of the amount of lobbying activity conducted by your organization.

Additional details on the [Federal Registration and Reporting Under the Federal Lobbying Disclosure Act](#) are outlined in our previous white paper.

Massachusetts Registration and Reporting

Massachusetts General Law c. 3, §§39 - 50 regulate lobbying activities in the state.

In Massachusetts, “Lobbying” is not specifically defined. Rather, the law speaks about an “act to communicate directly with a covered executive official to influence a decision concerning policy or procurement.” There is a fairly lengthy discussion of what that includes and what it excludes all of which appears in Section 39 of the law.

The definition section also contains the definition of an “Authority” or public instrumentality. It is important to also become familiar with what entities this includes as interactions with these “Authorities” may also subject you to the lobbying law.

An “Executive Agent” is a person who for compensation engages in executive lobbying, which includes at least 1 lobbying communication with a government employee. This would appear to include any compensated employee of a not-for-profit organization. Executive lobbying is acting to promote, oppose, influence or attempt to influence the decision of any officer or employee of the executive branch or an authority.

A “Legislative Agent” is similar to an executive agent except that he engages in legislative lobbying. Legislative lobbying is acting to promote, oppose, influence or attempt to influence legislation.

During the period from December 1 to the 15th each year the Secretary of State will conduct mandatory educational seminars for executive and legislative agents. If you are unable to attend the live seminar, PDF material is available on the Secretary of State's website.

Note: The federal Act talks about "lobbying activities" which include the background activities that support the lobbying effort. The Massachusetts law only addresses lobbying as the direct act of promoting, opposing, amending, etc. Therefore, your employees who are performing research would not appear to be included in the Massachusetts regulated lobbying activities, but the employees who are stuffing envelopes for a mailing which promotes or opposes a piece of legislation are probably included.

Each legislative agent and executive agent must file an annual registration statement with the Secretary of State on forms prescribed and provided by the secretary. The annual registration must be completed no later than December 15th of the year preceding the registration year.

If your organization does no lobbying itself with its own employees, but retains the services of a legislative or executive agent or a lobbying organization, your organization must also file an annual registration statement with the Secretary of State. This also must be done by December 15th each year.

If during the December 1–15 registration period, your organization did not have a legislative or executive agent and had not retained a lobbying organization to act on your behalf, but you do engage one or more of these subsequent to the ending of the registration period, you have 10 days to complete the registration process. Also, if you terminate your lobbyist or agent, this termination must also be reported to the Secretary of State. This notification is in your best interest since the Secretary of State is maintaining a list of active lobbyists and if your organization is not engaged in lobbying activity, you probably do not want to appear on this listing that is open to the public.

There is a \$100 annual filing fee for each agent you name and register although the Secretary of State has it within his discretion to waive the filing fees for a not-for-profit organization. Your request should be made in writing. The waiver will only apply to individuals who register to exclusively represent not-for-profit organizations.

Semi-annual financial reports must be filed with the Secretary of State. Reports are due on July 15th and January 15th for the six month period ending on the end of the month preceding these dates. These include a complete and itemized report of all campaign contributions and expenditures made in the course of employment as an executive or legislative agent.

The reporting must also include the name of the organization for whom the agent is working, a list of the bill numbers, names of legislation and other governmental action to which the lobbying effort is connected, your position on the subject (*i.e.* promote, oppose, influence, etc.), the compensation received for this work, and all direct business associations with public officials.

The penalty for late filing of these semi-annual registration statements is \$50 per day for the first 20 days and \$100 per day thereafter. The penalty may be waived by the Secretary of State for good cause although the penalty cannot be waived for a report that is more than 60 days late.

In addition to the registration and reporting requirements for individuals, there is also a registration and reporting requirement for organizations that are attempting to influence legislation. This only

applies to organizations that are not employing an executive or legislative agent and who spend greater than \$2,000 during the calendar year to promote, oppose or influence legislation or other related matters.

These reports are also due on July 15th and January 15th for the six month period ending on the end of the month preceding these dates listing the total expenditures made during the reporting period. The reporting is fairly detailed in regard to the breakdown of what the expenditures were for and who the beneficiaries of the expenditures were. The penalties for late filing are as noted above including the potential for a waiver of the penalty.

Note: As we noted above, the Massachusetts law does not include a definition of “lobbying” and instead talks about acting to communicate directly with a covered executive official to influence a decision concerning policy or procurement. We have noted that some nonprofit organizations have elected to register and report activities that do not appear to be covered by this law or appear to fall into the gray area. For example, we noted one human service organization has registered and filed providing the following explanation of their expenditures (which totaled less than \$10,000 for the year):

“..The executive director meets frequently with Executive Branch personnel, as well as with legislators. The areas of focus are the general appropriation and other appropriation bills, the human services workers salary reserve, the Caring Together RFR issues...”

We recommend that you consult with your attorney or other legal resource to determine if your activities subject you and your organization to registration and reporting under these laws.

Read our related whitepaper titled: [Federal & Rhode Island Reporting and Registration Requirements Related to Lobbying Activity](#)

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*Please note that this whitepaper is a general summary of the law and omits many important details, footnotes and caveats. It is no substitute for informed advice from a tax professional based on your particular circumstances.

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