

Contribution Blackout Periods: Risks Associated with State Political Activity During Legislative Sessions

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In an increasing maze of rules regarding when certain groups may contribute to legislative officials and candidates, states have adopted different approaches to “blackout” periods, or periods in which legislative officials and candidates may not accept contributions in general or from lobbyists in particular. Such state variance makes it important for companies and individuals alike to consult compliance counsel before giving gifts and contributions to legislative officials and candidates, especially when the state legislature is currently in session.

For example, in Kansas, corporations and lobbyists are prohibited from contributing to a statewide office holder, legislator, candidate, or political committee established by a state committee of any political party and designated as a recognized political committee for the legislature after January 1 through sine die adjournment of the legislative sessions, and at any other time the legislature is in session.

Vermont, on the other hand, only prohibits contributions during the legislative session from lobbyists. Thus, while there is no general prohibition, a registered lobbyist, lobbying firm, or registered lobbyist employer may not contribute or promise to contribute to a legislator, their campaign, or their leadership PAC (and legislators and administrative officials may not solicit contributions from those persons) when the general assembly is in session.

Similarly, in North Carolina, “limited contributors,” such as lobbyists or political committees that employ or contract with lobbyists, are prohibited from making contributions to a “limited contributee,” a

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member of or candidate for the Council of State, a member of or candidate for the General Assembly, or an affiliated party committee. Further, no limited contributor can solicit a contribution from any individual or political committee on behalf of a limited contributee nor can a limited contributor make a contribution to any candidate or political committee, directing or requesting that the contribution be made in turn to a limited contributee. Finally, there is an exception to this “blackout” period rule three weeks prior to the day of a second primary if a limited contributee will be on the ballot in that second primary.

In a broader framework, Alabama prohibits candidates for state office from soliciting, accepting, or receiving contributions during a legislative session. The legislative-session blackout period does not apply within 120 days of a primary, runoff, or general election, and the period also does not apply to candidates participating in a special election called by the governor. There is no lobbyist-specific provision in Alabama’s general “blackout” period.

Moreover, each state’s contribution blackout rules are often tied to very specific exceptions. For example, in Maine, the Governor, legislators, constitutional officers, their staff, and PACs and party committees controlled by the above may not solicit or accept contributions from lobbyists, lobbyist associates, or lobbyist employers when the legislature is in session. However, there are exceptions for contributions for: (1) special elections to fill a vacancy from the time the election is announced until the election, (2) nonpartisan, charitable social events, (3) legislators’ campaigns for federal office, and (4) qualifying contributions.

At the opposite end of the spectrum, some states, like Hawaii, Idaho, Massachusetts, and Michigan, have chosen not to adopt any rules on contribution “blackout” periods.

As demonstrated by the snapshot of various states’ laws, this compliance area is fraught with risk. Because many states have adopted different approaches and specific prohibitions as well as carved out various exceptions, it is imperative that companies consult compliance counsel to successfully navigate this complicated, time-sensitive web of “blackout” period rules.