

PAC Payroll Deduction and Disclaimer Errors Result in \$92,650 Civil Penalty

January 2019

The Federal Election Commission (FEC) recently announced that a labor union and its political action committee (PAC) agreed to pay a \$92,650 civil penalty for raising money for the PAC through improper payroll deduction practices. Although this enforcement matter involved a labor union, the payroll deduction rules at issue also apply to corporations and associations soliciting funds for their PACs.

In March 2016, a union member filed a complaint with the FEC alleging that the labor union had deducted funds from his paycheck for the PAC without his authorization and refused to issue him a refund. The FEC found reason to believe that the labor union and its PAC had violated the law because they did not provide information showing that the member had affirmatively and voluntarily authorized the payroll deduction contributions for the PAC.

After further investigating the allegations, the FEC found that the labor union and its PAC appeared to be operating a “reverse check-off” system whereby union members were automatically enrolled in payroll deduction contributions for the PAC unless they opted out. Reverse check-off systems are *per se* prohibited under federal campaign finance law, which requires that individuals affirmatively opt-in for payroll deduction contributions. The FEC’s investigation also revealed improper recordkeeping and disclaimer practices in the labor union’s payroll deduction program for the PAC.

Specifically, the FEC found that the labor union and its PAC obtained written payroll deduction authorizations for only 125 of the 1,310 members who contributed to the PAC through payroll deduction during the relevant time. FEC regulations require a PAC and its connected organization to obtain affirmative authorization from

Authors

Brandis L. Zehr
Partner
202.719.7210
bzehr@wiley.law

Practice Areas

Election Law & Government Ethics
Political Law Compliance Counseling

individuals for payroll deduction contributions and maintain records documenting such authorization for at least three years. The FEC also found that the 125 written payroll deduction authorizations did not conform with FEC regulations because they failed to inform members that contributions to the PAC are voluntary or of their right to refuse to contribute without reprisal, and listed preset contribution amounts without noting the amounts were suggestions or giving members the opportunity to contribute a different amount. Such disclaimers are legally required because they help ensure that contributions to the PAC are voluntary and made without coercion.

The labor union contended it orally advised its members of the voluntary nature of PAC contributions, but the FEC found these arguments “unavailing” because the labor union and its PAC could not provide evidence they orally recited all of the legally required disclaimers and had no documentation demonstrating 1,185 members who contributed to the PAC through payroll deduction had, in fact, affirmatively authorized these deductions. In a pre-probable cause conciliation agreement with the FEC, the labor union and its PAC agreed to pay a \$92,650 civil penalty and notify the 1,310 members that their payroll deduction contributions to the PAC were improper and they had the right to request and receive a refund of these improper contributions.