

**UNION PARTICIPATION
IN THE POLITICAL PROCESS:**

**AN OVERVIEW
OF LOCAL CAMPAIGN
FINANCING AND LOBBYING LAWS FOR
UNIONS IN NEW YORK CITY**

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INTRODUCTION

Labor unions in New York City can participate in the political process either by contributing to political campaigns or by lobbying the state and city governments on their members' behalf. Many issues affecting your union's membership can best be dealt with on a local level. In some respects, because New York City is the most unionized urban center in the Nation, unions here can have a greater impact on legislation and governmental administration than anywhere else.

This overview focuses on campaign finance and lobbying laws in the State of New York and New York City. It will not discuss Federal law in detail because Federal law only applies if a labor union contributes money or services to campaigns for a federal office, e.g. President, U.S. Senator or U.S. Representative.¹ This overview is for labor unions that want to contribute to campaigns for New York State or New York City government offices.

The election and lobbying laws are complicated and your union should consult its attorney before making any contributions to candidates running for office. If you have any specific questions about the information in this Overview, you should speak to your attorney or you may contact one of the attorneys at Cary Kane LLP.

This Overview is only intended to provide general guidance and information; it is not intended to constitute legal advice or to create a lawyer-client relationship. This information was compiled in January 2006, and is believed to be accurate as of that date. Consequently, the author and Cary Kane LLP cannot and do not guarantee that the information contained herein may be relied upon because it does not contain later developments in the law. You should not act, or refrain from acting, solely on the basis of the information provided. The author and Cary Kane LLP expressly disclaim all liability in respect of all matters and all actions taken or not taken based on any information contained in this Overview.

WHAT CAN YOUR UNION DO WITHOUT HAVING TO WORRY ABOUT THE LAW?

A labor union can choose not to contribute to political campaigns and limit its political activities to: (i) suggesting at a union membership meeting that the members vote for or volunteer for a certain candidate; (ii) endorsing a candidate at a union membership meeting; (iii) conducting voter registration drives; or (iv) buying a ticket to a fund-raiser that benefits a certain candidate.² The advantage to this limited participation in the political process is that the union would not have to file anything with the New York State or New York City governments.

WHAT SHOULD YOUR UNION DO IF IT WANTS TO DO MORE

If a labor union wants to contribute to State or City campaigns, it should set up a separate committee with its own bank account that is separate from the union's treasury. Even though

¹ 2 U.S.C. §§ 431-34, 437, 441a, 441b.

² New York State Board of Elections, 1978 Opinion #16.

labor unions can directly contribute to State or City campaigns,³ there are two disadvantages to that approach. First, a union could be taxed by the IRS on its net investment income or its political expenses if it makes the contributions itself.⁴ Second, a labor union would have to file periodic financial reports about itself with the State and City governments.⁵ For these reasons, a labor union is better off setting up a separate committee to file the financial reports.

A union can set up three different kinds of committees: (1) a **Political Action Committee** (“**PAC**”), which only makes contributions and does nothing else to help a candidate’s campaign for office; (2) an **Authorized Political Committee** that is authorized by a particular candidate to make contributions and to ask or accept money for contributions from the public or its members or to spend money on the candidate’s behalf; and (3) an **Independent Political Committee** which is one that makes contributions and accepts or asks for money from the public or its members or spends money on the candidate’s behalf, but does not have the candidate’s authorization to do so. Remember, if a union engages in these acts itself, a union becomes an **Authorized Political Committee, Independent Political Committee, or a PAC** as the case may be.

A union’s separate committee is a **PAC** if it only makes contributions to campaigns. A **PAC** must register with the New York City Campaign Finance Board before it can start contributing to campaigns for New York City government offices. PACs must also register with the New York State Board of Elections and file financial reports with the State Board of Elections or the New York City Board of Elections. The registration statements are described in this Overview and attached in Appendix A.⁶ Compared to an Authorized Political Committee or an Independent Political Committee, the only advantage to being a PAC is that a PAC doesn’t have to file an extra registration form called a Form CF-03, with the New York State Board of Elections.

A union’s separate committee is an **Authorized Political Committee** if the Political Committee is authorized by a candidate to make contributions and spend money on a candidate’s behalf.⁷ A union’s separate committee is also considered an **Authorized Political Committee** if the Political Committee is authorized by a candidate to make contributions and ask for or accept money from its members (other than regular dues) or the general public.⁸ There is no advantage to being an Authorized Political Committee because any money spent for a candidate’s benefit counts as a contribution. That means that an Authorized Political Committee is limited as to how much it can spend on a candidate.⁹

³ See New York State Board of Elections, 1975 Opinion #2; New York City Council Local Law 105/2005 (adopted as a New York City Charter Rule on December 17, 2005).

⁴ 26 U.S.C. §§ 11(b), 527(a)-(c), (f)(1).

⁵ New York Election Law §§ 14-102, 14-112, 14-118.

⁶ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, pages 5 (2005), available at <http://www.elections.state.ny.us/download/finance/hndbk2005.pdf>.

⁷ New York Election Law § 14-100(9); New York State Board of Elections, 1975 Opinion #2 (1975), available at <http://www.elections.state.ny.us/download/law/opinions.pdf>.

⁸ New York Election Law § 14-100(9); New York State Board of Elections, 1975 Opinion #2 (1975).

⁹ New York Election Law § 14-100(9).

A union's separate committee is an **Independent Political Committee** if it makes contributions and spends money on a candidate's behalf without the candidate's authorization.¹⁰ A union's separate committee is also an **Independent Political Committee** if it makes contributions and asks for or accepts money from its members (other than regular dues) or the general public.¹¹ It is better to be an Independent Political Committee than an Authorized Political Committee because any money that an Independent Political Committee spends for a candidate's benefit (such as paying for newspaper ads to persuade the public to vote for the candidate) is NOT considered a contribution. Independent Political Committees can spend as much as they want for a candidate's benefit without worrying about any limits.

Authorized Political Committees and **Independent Political Committees** must register with the New York City Campaign Finance Board before it can start contributing to campaigns for New York City government offices. **Authorized Political Committees** and **Independent Political Committees** must also register with the State Board of Elections and file financial reports and also file a Form CF-03, which is a sworn statement that lists the candidates who authorized the committee to help them in the campaign and also lists the candidates who did not authorize the committee to help them in the campaign.

Contributing to New York State and City Campaigns

The New York State Election Law¹² sets maximum contribution limits and imposes registration and reporting duties on contributors to State and City political campaigns.¹³

Unions contributing treasury assets to political campaigns at the state and city levels of government are automatically responsible for filing financial reports with the New York State Board of Elections or the New York City Board of Elections.¹⁴ If a union sets up a political committee or a PAC, then that **political committee or PAC must register and file financial reports under the New York State Election Law.**¹⁵ The expenses that union paid in setting up the Political Committee or PAC must be reported by the Political Committee or PAC on its financial reports as an in-kind contribution.

From this point on, this Overview will assume that a union has set up a separate PAC or political committee and will only refer to separate political committees or PACs.

¹⁰ New York Election Law § 14-100(9); New York State Board of Elections, 1975 Opinion #2 (1975).

¹¹ New York Election Law § 14-100(9); New York State Board of Elections, 1975 Opinion #2 (1975).

¹² N.Y. Election Law §§ 14-100—14-130.

¹³ New York Election Law §§ 14-102, 14-112, 14-114, 14-118.

¹⁴ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, pages 1 and 5 (2005), available at <http://www.elections.state.ny.us/download/finance/hndbk2005.pdf>.

¹⁵ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, pages 1 and 5 (2005).

A. Contributing Only to a New York City Political Campaign

1. Contributions and maximum contributions limits

PACs and Political Committees can give money, gifts, outstanding loans, and any thing of value as a contribution to a candidate in connection to that candidate's nomination or election to a New York City government office.¹⁶ A PAC or Political Committee can send money to another political committee or PAC or pay the wages, salaries or fees for volunteer work for a candidate and those donations will be considered contributions.¹⁷

The New York City Campaign Finance Board sets limits on how much a candidate can accept from a single source while running for a New York City government office. These limits on how much a candidate can accept will be called candidate limits. The candidate limits for 2005 were:

- The Combined Total Primary and General Election limit for New York City Mayor, Public Advocate or Comptroller was \$4,950 for each office.¹⁸
- The Combined Total Primary and General Election limit for Borough President was \$3,850.¹⁹
- The Combined Total Primary and General Election limit City Council was \$2,750.²⁰

Candidate limits for 2006 have not yet been set by the New York City Campaign Finance Board as of the date this Overview was written.

Every election year, the New York City Board of Elections sets limits on how much contributors can give each year to a candidate's political campaign. This Overview will refer to these limits as contributor limits. The limits set for individuals by the New York City Board of Elections are the contributor limits for all PACs and Political Committees that are not corporations.²¹ In other words, a PAC or Political Committee cannot give more than an individual is allowed to contribute to a given candidate. The entire listing of contributor limits set by the New York City Board of Elections for 2005 is attached in Appendix A. Here are the 2005 union PAC or political committee contributor limits for the primary and general elections for Mayor, Public Advocate, and Comptroller:

¹⁶ New York, N.Y. Admin. Code § 3-702(8), (10).

¹⁷ Compare New York Election Law § 14-100(9) with New York, N.Y. Admin. Code § 3-702(8).

¹⁸ New York City Campaign Finance Board, Contribution Limits, Spending Limits, and Public Fund Requirements 2005 Citywide Elections, *available at* http://www.nycfb.info/program_law/program_info/program_2005_info.htm (last visited January 27, 2006).

¹⁹ New York City Campaign Finance Board, Contribution Limits, Spending Limits, and Public Fund Requirements 2005 Citywide Elections.

²⁰ New York City Campaign Finance Board, Contribution Limits, Spending Limits, and Public Fund Requirements 2005 Citywide Elections.

²¹ New York City Board of Elections, Notice of Information Relative to 2005 Contribution Limitations, (May 27, 2005), *available at* <http://www.vote.nyc.ny.us/pdf/documents/boe/2005contributionlimitations.pdf>.

**2005 Contributor Limits set by the New York City Board of Election
for Elections to New York City Mayor, Public Advocate, and Comptroller**

<u>Elections</u>	<u>Party</u>	<u>Individual</u>
Primary	Democratic	\$14,700.00
Primary	Republican	\$14,700.00
Primary	Independence	\$ 3,968.80
Primary	Conservative	\$ 1,012.40
Primary	Working Families	\$ 1,000.00
General		\$30,000.00 ²²

Remember that in addition to your contributor limits, candidates for City government offices have significant limitations on how much they can accept from your PAC or Political Committee. Don't contribute more to a candidate than he can receive under the law.

For purposes of calculating whether a candidate for City office has reached his maximum contribution limit from a single source, the New York City Council recently passed legislation making it clear that a local union's contribution is not added together with other affiliated bodies such as district councils, providing certain conditions are satisfied.²³ The contributions from different affiliates are not aggregated if they come from separate bodies, e.g., two local affiliates of the same international union, so long as they do not share a majority of executive board members or officers. In other words there can be some overlap between the two leaderships but not enough so that both bodies are effectively run by the same group of people. In addition, each union body must have its own committee, with each making the contribution out of a different bank account needing different signatories.²⁴ If the committees are set up this way, then each union body gets the benefit of separately contributing up to the maximum limit.²⁵

2. Paying Expenses for a Candidate's Campaign for New York City government office

An Independent Political Committee can pay as much of a candidate's expenses as it wants; there is no limit on the amount an independent political committee can pay.²⁶ An example of an expense that an Independent Political Committee can pay is an expense for newspaper ads to persuade the public to vote for the candidate. To be "independent" the union's committee can

²² New York City Board of Elections, 2005 Contribution Limits Citywide Public Offices, *available at* <http://www.vote.nyc.ny.us/pdf/documents/boe/2005contributionlimits.pdf>.

²³ New York City Council, Local Law 105/2005 (codified at New York, N.Y. Admin. Code § 3-703(1)(f)).

²⁴ See New York, N.Y. Admin Code §§ 3-702(15), 3-703(f)(1), 3-703(h), *available at* http://www.nycfb.info/program_law/cflaw/cfact/CFACTchap7.htm#703.

²⁵ New York, N.Y. Admin. Code §§ 3-702(15), 3-703(h).

²⁶ New York Election Law § 14-100(9); New York State Board of Elections, 1981 Opinion #5 (July 27, 1981).

not be authorized, requested, suggested, or fostered by the candidate or the candidate's authorized committees.²⁷

If the Political Committee is authorized by the candidate to help out in the campaign, it can only pay a limited amount of the candidate's expenses. Payments by an "authorized" committee are considered contributions to the candidate's campaign.²⁸ Consequently, the committee must make sure that it doesn't pay more of the candidate's expenses than the candidate is allowed to accept in contributions.

Form of payment of candidate expenses and reporting candidate expenses: Every Political Committee should be aware that there is a difference between the dollar amounts that control the form of payment and the dollar amounts that control what expenses need to be reported. A union's committee may pay expenditures in cash if the expense is \$100 or less, but if the expense is more than \$100 in total, then it must be paid with a check signed by the political committee's treasurer.²⁹ All Political Committees are required to report expenditures on the Form CF-01,³⁰ but if the amount of the expenses paid is \$50 or less, then the political committee does not have a duty to report them.³¹

3. Registering and Filing Reports Required by New York State Election Law

In order to contribute to a campaign for New York City office you must register with the City and the State. A union's PAC or Political Committee must register with the State Board of Elections before it starts contributing to campaigns for New York City government office.

A union's PAC or Political Committee that wants to contribute to campaigns for New York City office, must also register with the New York City Campaign Finance Board.³² If the PAC or the Political Committee does not register, then the candidate cannot accept the contributions, unless registration takes place within 10 days after the next list of registered political committees is published by the Board.³³

Registration Form 1: Choice Of Treasurer (political committees and PACs): Anytime a union sets up a Political Committee or a PAC, it has to pick a treasurer. Within five days of choosing a treasurer, the Political Committee or the PAC must file a Form CF-02 with the State Board of Elections, which asks for the treasurer's name and address, the name and

²⁷ New York, N.Y. Admin. Code § 3-702(8)(c); New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 2 (2005).

²⁸ New York Election Law § 14-100(9).

²⁹ New York Election Law § 14-118(2).

³⁰ New York Election Law § 14-102, 14-118.

³¹ 9 New York Codes, Rules and Regs. § 6200.5.

³² New York, N.Y., Admin. Code § 3-707(2).

³³ New York, N.Y. Admin. Code § 3-707(2).

address of anyone authorized to sign checks, and the candidate(s) or ballot proposals that the political committee will support or oppose.³⁴

Registration Form 2: All political committees, but not PACs, must file this form:

The treasurer of every Political Committee is required to file a Form CF-03, which is a sworn verified statement that asks the treasurer to list which candidates authorized the Political Committee to help out in the campaign and which candidates did not authorize the Political Committee to help out in the candidate's campaign.³⁵ Form CF-03 must be filed with the State Board of Elections.

Financial Report Form: Statement Of Contributions, Expenditures, and Liabilities (political committees and PACs): The treasurer of a Political Committee or a PAC must file a Form CF-01, which is a sworn statement that lists the contributions, expenditures, receipts and liability of the committee, its members, officers and agents.³⁶ The statement should state the dollar or fair market value amount of each receipt, contribution, or expenditure; the name and address of the contributor; whether the contributor is a political committee; the date the contribution was received; and the purpose of expenditures.³⁷ **Reminder:** The expenses that the union paid in setting up the Political Committee or PAC must be reported by the Political Committee or PAC on its financial reports as an in-kind contribution.

In filling out the Form CF-01, a Political Committee that supports the success or defeat of a ballot proposal has to report those contributions given to the committee for that purpose if the expense payments are less than \$5,000 for any year.³⁸ If the expense payments are \$5,000 or more for any year, then all of the contributions received, expenses payments made, and other money owed must be reported on the Form CF-01.³⁹

Place for Filing CF-01 Reports: The Form CF-01 Report of Contributions, Expenditures and Liabilities must be filed with the New York City Board of Elections if contributions were only made to campaigns for New York City government office.⁴⁰ The Form CF-01 Report of Contributions must be filed with a County Board of Elections if contributions were **only** made to a candidate running office whose voters are within a single county.⁴¹ For example, file with the Kings County Board of Elections if contributing **only** to a candidate for Brooklyn Borough President. The Form CF-01 Report of Contributions, Expenditures and Liabilities must be filed with **only** the New York State Board of Elections if contributions were made to campaigns for New York State **and** New York City Government offices.⁴²

³⁴ New York Election Law § 14-118(1).

³⁵ New York Election Law § 14-112.

³⁶ New York Election Law § 14-102.

³⁷ New York Election Law § 14-102(1).

³⁸ New York Election Law § 14-102(2).

³⁹ New York Election Law § 14-102(1)-(2).

⁴⁰ 9 New York Codes, Rules and Regs. § 6200.1(b)(2).

⁴¹ 9 New York Codes, Rules and Regs. § 6200.1(b)(2).

⁴² 9 New York Codes, Rules and Regs. § 6200.1(c).

Time for Filing CF-01 Reports: The Form CF-01 must be filed on January 15th and July 15th of every year.⁴³ In election years, the Form CF-01 must be filed on January 15th and July 15th, **and** three more times for each and every primary, general, and special election. The CF-01 election reports are due on the 32nd day before an election, the 11th day before an election, and on the 27th day immediately after the election or convention.⁴⁴

In addition to these things, if a Political Committee or a PAC receives a contribution exceeding \$1,000 within 14 days before an election, the Political Committee or the PAC must report the contribution on Form CF-01 within 24 hours of receiving the contribution.⁴⁵

All Political Committees must attach, to the statements required under New York’s Election Law, a copy of all circulated “advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter” and a schedule of all radio or television time along with any scripts used in such broadcasts.⁴⁶

B. Contributing to a New York State Political Campaign

1. Contributions and maximum contribution limits

What can be given as a contribution? In State elections, PACs and Political Committees can give money, loans or any thing of value to support or defeat a candidate’s nomination or election, or to promote the success or defeat of a political party, principle or ballot proposal.⁴⁷ If non-monetary gifts or other things of value are given as contributions, the value is measured by the fair market value.⁴⁸ Contributions also include paying the expense of services (like advertising, for example) to support a candidate’s nomination or election.⁴⁹

Remember that payments made by an Authorized Political Committee for the candidate (**authorized political committees** are requested, suggested, or fostered by the candidate to help in the campaign) are contributions and count toward the contributions limits. However, payments made by an Independent Political Committee for the candidate are not contributions and do not count toward the contribution limits.⁵⁰

Unions’ PACs or Political Committees can only accept cash donations of \$100 or less; any donation that is more than \$100 must be paid with a check, credit card or other non-cash method.⁵¹ Records of donations via credit cards, checks or other instruments must be kept by whoever received the donation.⁵²

⁴³ 9 New York Codes, Rules and Regs. § 6200.2(b).

⁴⁴ 9 New York Codes, Rules and Regs. § 6200.2(a).

⁴⁵ 9 New York Codes, Rules and Regs. § 6200.2(g).

⁴⁶ New York Election Law § 14-106.

⁴⁷ New York Election Law § 14-100(9)(1)-(2).

⁴⁸ New York Election Law § 14-114(2).

⁴⁹ New York Election Law § 14-100(9)(3).

⁵⁰ New York Election Law § 14-100(9)(3).

⁵¹ New York Election Law § 14-118.

⁵² New York Election Law § 14-118.

According to the New York State Board of Elections, PACs and Political Committees that are not corporations can technically contribute as much as they want to campaigns for a New York State government office.⁵³ **But**, candidates are only allowed to accept a certain amount that is determined by the State Board of Elections.⁵⁴ These limits will be called candidate limits in this Overview. Candidate limits are different for primary elections and general elections.⁵⁵ The effect of candidate limits is that a union's PAC or Political Committee can only contribute up to the candidate limit for each candidate, and can contribute to many candidates for office.⁵⁶

New York State law is silent as to whether the contributions of a Local Union's PAC or Political Committee are combined with the contributions of an affiliated District Council's PAC or Political Committee. New York State law is also silent as to whether those contributions are considered to be from a single source subject to a single limit.

At the time this overview was prepared, the New York State Board of Elections had not posted the candidate limits for 2006. The candidate limits for 2005 were:

The General Election limit for any statewide office like governor was \$33,900.

The Primary limit to be nominated for the State Senate was \$5,400.

The General Election limit for the State Senate was \$8,500.

The Primary limit to be nominated for the State Assembly was \$3,400.

The General Election limit for the State Assembly was \$3,400.⁵⁷

So, for example, in 2005, a union's committee could contribute \$33,900 to a candidate for governor in a general election, \$5,400 to a State senator candidate running in the primary election, another \$8,500 to a State senator candidate running in the general election, and so on without worrying about reaching a contributor limit (like the contributor limits set for New York City government offices by the New York City Board of Elections).⁵⁸

2. Political Committees can spend money to pay for candidate's expenses

A union that is an independent political committee can pay as much of a candidate's expenses as it wants; there is no limit on the amount an independent political committee can pay.⁵⁹ An example of an expense that an Independent Political Committee can pay is an expense for newspaper ads to persuade the public to vote for the candidate. To be "independent" of a

⁵³ New York State Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 13 (2005).

⁵⁴ New York Election Law § 14-114(1).

⁵⁵ New York Election Law § 14-114.

⁵⁶ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 13 (2005).

⁵⁷ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, pages 14-15 (2005).

⁵⁸ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 13 (2005).

⁵⁹ New York Election Law § 14-100(9); New York State Board of Elections, 1981 Opinion #5 (July 27, 1981).

candidate, the candidate or his authorized committee cannot have authorized, requested, suggested, or fostered the union's committee to support the candidate.⁶⁰

A union that is authorized by the candidate to help out in the campaign can only pay a limited amount of the candidate's expenses. These payments by an authorized committee are considered contributions to the candidate's campaign.⁶¹ Consequently, the committee must make sure that it doesn't pay more of the candidate's expenses than the candidate is allowed to accept in contributions.⁶²

Form of payment of candidate expenses and reporting candidate expenses: Every Political Committee should be aware that there is a difference between the dollar amounts that control the form of payment and the dollar amounts that control what expenses need to be reported. A union's committee may pay expenditures in cash if the expense is \$100 or less, but if the expense is more than \$100 in total, then it must be paid with a check signed by the political committee's treasurer.⁶³ All Political Committees are required to report expenditures on the Form CF-01,⁶⁴ but if the amount of the expenses paid is \$50 or less, then the political committee does not have a duty to report them.⁶⁵

3. Registration and Reporting Requirements for Contributing to a Campaign for New York State Government Office

A union can decide that its committee will **only** contribute to political campaigns, and that makes the committee a **PAC**.⁶⁶ A PAC only has to file a registration form called a CF-02 and a financial report called a CF-01 with the State Board of Elections.⁶⁷ Form CF-02 identifies the PAC's treasurer, gives his name and address, and lists who can sign checks on behalf of the treasurer.⁶⁸ Form CF-01 lists the contributions, expenditures, receipts and liability of the committee, its members, officers and agents.⁶⁹

A union can decide that its committee will contribute to political campaigns and solicit or accept money for political contributions, other than regular dues, and that makes the committee a **Political Committee**.⁷⁰ A union can decide that its committee will contribute to political campaigns and spend money on a candidate's behalf, and that also makes the committee a **Political Committee**.⁷¹ For example, a committee is a Political Committee if it contributes money to a campaign and spends money for any of these things: (a) to endorse a candidate

⁶⁰ New York, N.Y. Admin. Code § 3-702(8)(c); New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 2 (2005).

⁶¹ New York Election Law § 14-100(9).

⁶² New York Election Law § 14-100(9).

⁶³ New York Election Law § 14-118(2).

⁶⁴ New York Election Law § 14-102.

⁶⁵ 9 New York Codes, Rules and Regs. § 6200.5.

⁶⁶ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 1 (2005).

⁶⁷ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 5 (2005).

⁶⁸ New York Election Law § 14-118.

⁶⁹ New York Election Law § 14-102; New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 4 (2005).

⁷⁰ New York State Board of Elections, 1975 Opinion #10 (July 1, 1975).

⁷¹ New York State Board of Elections, 1975 Opinion #10 (July 1, 1975).

through the media; (b) to send “partisan communications” that endorse a candidate or political position to the union’s members, their families or to the general public; or (c) to pay for an ad or “special literature” to endorse a candidate, which the candidate does not report as an “in-kind contribution.”⁷²

A Political Committee has to file the CF-02 and CF-03 registration forms and the CF-01 financial report with the State Board of Elections.⁷³ (Please notice that the CF-03 is an additional form that all Political Committees must file, but that a PAC does not have to file.) The information that should be given on these forms is discussed below in the section on reporting requirements. Copies of Forms CF-01, CF-02, and CF-03 are attached in Appendix A.

If a Political Committee or a PAC is terminated, has been inactive, or its treasurer resigns, a Verification Statement (Form CF-18) must be filed with the State Board of Elections.⁷⁴ A copy of the Verification Statement is attached in Appendix A.

4. Registration Forms and Financial Report Forms

Registration Form 1: Choice Of Treasurer (political committees and PACs): Anytime a union sets up a Political Committee or a PAC, it has to pick a treasurer. Within five days of choosing a treasurer, the PAC or the Political Committee must file a Form CF-02 with the State Board of Elections, which asks for the treasurer’s name and address, the name and address of anyone authorized to sign checks, and the candidate(s) or ballot proposals that the PAC or Political Committee will support or oppose.⁷⁵

Registration Form 2: All political committees, but not PACs, must file this form: The treasurer of every Political Committee is required to file a Form CF-03, which is a sworn verified statement that asks the treasurer to list the candidates who authorized the Political Committee to help out in the campaign and the candidates who did not authorize the Political Committee to help out in the candidate’s campaign.⁷⁶ Form CF-03 must be filed with the State Board of Elections.

Financial Report Form: Statement Of Contributions, Expenditures, and Liabilities (political committees and PACs): The treasurer of a Political Committee or a PAC must file with the State Board of Elections a Form CF-01, which is a sworn statement that lists the contributions, expenditures, receipts and liability of the committee, its members, officers and agents.⁷⁷ The statement should state the dollar or fair market value amount of each receipt, contribution, or expenditure; the name and address of the contributor; whether the contributor is a political committee; the date the contribution was received; and the purpose of expenditures.⁷⁸

Reminder: The expenses that union paid in setting up the Political Committee or PAC must be reported by the Political Committee or PAC on its financial reports as an in-kind contribution.

⁷² New York State Board of Elections, 1978 Opinion #16.

⁷³ New York Election Law §§ 14-102, 14-112.

⁷⁴ New York Board of Elections, Handbook of Instructions for Campaign Financial Disclosure, page 5 (2005).

⁷⁵ New York Election Law § 14-118(1).

⁷⁶ New York Election Law § 14-112.

⁷⁷ New York Election Law § 14-102.

⁷⁸ New York Election Law § 14-102(1).

In filling out the Form CF-01, a Political Committee that supports the success or defeat of a ballot proposal has to report those contributions given to the committee for that purpose if the expense payments are less than \$5,000 for any year.⁷⁹ If the expense payments are \$5,000 or more for any year, then all of the contributions received, expense payments made, and other money owed must be reported on the Form CF-01.⁸⁰

Place for Filing CF-01 Reports: The Form CF-01 Report of Contributions, Expenditures and Liabilities must be filed with the State Board of Election if a PAC or Political Committee makes any contributions to campaigns for New York State government office.⁸¹ The Form CF-01 Report must also be filed with the State Board of Elections if contributions were made to campaigns for office where the voters were in two or more counties or the City of New York and one county, even if no contributions were made to a campaign for State government office.⁸²

Deadlines for Filing CF-01 Reports: The Form CF-01 must be filed on January 15th and July 15th of every year.⁸³ In election years, the Form CF-01 must be filed on January 15th and July 15th, **and** three more times for each and every primary, general, and special election. The CF-01 election reports are due on the 32nd day before an election, the 11th day before an election, and on the 27th day immediately after the election or convention.⁸⁴ The next 11 Day Pre-Election Statement must be filed by February 17, 2006, and the next 27 Day Post-Election Statement must be filed by March 27, 2006.⁸⁵

If a PAC or Political Committee receives a contribution exceeding \$1,000 within 14 days before an election, the PAC or Political Committee must report the contribution on Form CF-01 within 24 hours of receiving the contribution.⁸⁶

A Political Committee must attach, to the statements required under New York's Election Law, a copy of all circulated "advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter" and a schedule of all radio or television time along with any scripts used in such broadcasts.⁸⁷

⁷⁹ New York Election Law § 14-102(2).

⁸⁰ New York Election Law § 14-102(1)-(2).

⁸¹ 9 New York Codes, Rules and Regs. § 6200.1(b)(2).

⁸² 9 New York Codes, Rules and Regs. § 6200.1(b).

⁸³ 9 New York Codes, Rules and Regs. § 6200.2(b).

⁸⁴ 9 New York Codes, Rules and Regs. § 6200.2(a).

⁸⁵ New York State Board of Elections, Official Special Election Political Calendar (January 19, 2006), *available at* http://www.elections.state.ny.us/law/special_calendar2006.pdf.

⁸⁶ 9 New York Codes, Rules and Regs. § 6200.2(g).

⁸⁷ New York Election Law § 14-106.

C. Penalties under the New York State Election Law

1. Failure to file a statement

Failure to file a statement required by the New York State Election Law will subject the PAC's treasurer or the Political Committee's treasurer to a civil penalty of up to \$500. The treasurer is personally liable for paying the penalty.⁸⁸ It is a misdemeanor to knowingly and willingly fail to file a required statement.⁸⁹

2. Exceeding contribution limit

It is a misdemeanor to knowingly and willfully contribute, assist, or participate in the acceptance of a contribution that exceeds the State Board of Election's contribution limits.⁹⁰

3. Violations that are Class E Felonies

Anyone who helps a contributor or a candidate evade the contributions limits set by State law is guilty of a Class E felony.⁹¹

II. Special Concerns for Public Sector Unions That Use Agency Fee Deductions for Political Activities Such as Campaign Contributions and Lobbying

Public sector employees are free to make voluntary campaign contributions to the labor union or its committees as long as no state officer or employee used his or her authority to influence or force an employee to contribute.⁹² Public sector unions can arrange for employers to deduct an employee's voluntary contribution from a paycheck and forward the money to the union or its committee.⁹³

Non-member public sector employees in the bargaining unit are entitled to a refund of part of their agency fee deduction if they object to the union's use of treasury money for political activities.⁹⁴ Public sector unions' refund procedures should be designed to protect the non-member employees' Due Process and First Amendment rights⁹⁵ if the employer is deducting the agency fees from their paychecks.⁹⁶ Public sector unions must set-up their refund

⁸⁸ New York Election Law § 14-126(1).

⁸⁹ New York Election Law § 14-126(2).

⁹⁰ New York Election Law § 14-126(3).

⁹¹ New York Election Law § 14-126(4).

⁹² New York Civil Service Law § 17-156; *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35 (1977); New York Attorney General Formal Opinion 84-F3, 1982 N.Y. Opinion Attorney General 28.

⁹³ New York Attorney General Formal Opinion 84-F3, 1982 N.Y. Opinion Attorney General 28.

⁹⁴ New York Civil Service Law § 208(3)(b); New York General Municipal Law § 93-b; *Warner v. Board of Education of Gates Chili Central School District*, 99 Misc. 2d 251, 254-55 (N.Y. Supreme Court 1979); New York Attorney General Formal Opinion 84-F3, 1982 N.Y. Opinion Attorney General 28 (May 23, 1984).

⁹⁵ *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 302 (1986).

⁹⁶ New York Civil Service Law § 208(3)(b); *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35, 238 (1977); *Leemhuis v. New York State Public Employees Federation*, 121 A.D.2d 796, 797 (3d App. Dept. 1986); New York Attorney General Formal Opinion 84-F3, 1982 N.Y. Opinion Attorney General 28 (May 23, 1984).

procedures to require a quick response to a non-member employee's general objection to the union's political activities.⁹⁷ The procedure should either allow an advance reduction of agency fees for non-member employees who object or it should set up an interest-bearing escrow account to hold the agency fees after an objection is made while the union considers the non-member employee's objection.⁹⁸ Public sector labor unions also have to show how they calculated the proportion of political expenditures to total union expenditures and how they calculated the amount of agency shop fees used for political purposes for the non-member employees.⁹⁹

Note: Private sector unions can also arrange with an employer to have dues and agency fees of its non-member employees deducted from their paychecks.¹⁰⁰ However, in the face of an objection from a member or non-member, a private sector union can only keep so much of the agency fee or union dues deductions that relate to the "financial core" of collective bargaining. The union's political causes are not considered to be directly related to the core of collective bargaining.¹⁰¹ Consequently, private sector unions must have a procedure that refunds the portion of agency fee or union dues deductions spent on political purposes to the non-member employees who object to the union's political causes. It is not the intent of this Overview to discuss, so-called Beck Rights Procedures; you should contact your union's attorney to discuss the issue before engaging in support of political candidates.

III. Federal Campaign Finance Law Summary

Labor unions that contribute to campaigns for Federal, State or City government offices should be aware that Federal law, New York State law, and New York City law can be very different at times. This Section points out three key differences between Federal, New York State and New York City campaign contribution laws.

A. Difference #1: Contributions from labor unions

At the Federal level, a labor union must to set up a separate committee, which is known as a "**separate segregated fund**," with a separate bank account that is not shared by the Union's treasury to make any contributions to a campaign for a U.S. Government office, e.g. President or U.S. Senator.¹⁰² Federal election law absolutely forbids labor unions to contribute directly to candidates' campaigns for U.S. Government offices.¹⁰³ One thing that unions can do on their own without setting up a separate committee is run voter registration drives at their own expense.¹⁰⁴

In New York State and New York City, labor unions can choose between making contributions by themselves or using separate committees to make contributions.

⁹⁷ Chicago Teachers Union, 475 U.S. at 307-08.

⁹⁸ Chicago Teachers Union, 475 U.S. at 304.

⁹⁹ Chicago Teachers Union, 475 U.S. at 306.

¹⁰⁰ Communication Workers of America v. Beck, 487 U.S. 735, 751-54 (1988).

¹⁰¹ Communication Workers of America v. Beck, 487 U.S. 735, 751-54.

¹⁰² 2 U.S.C. § 441b(b)(2)(C).

¹⁰³ 2 U.S.C. § 441b(a).

¹⁰⁴ 2 U.S.C. § 441b(b)(2)(B).

B. Difference #2: Collecting Campaign Contributions

For federal campaign contributions, a union's separate committee can only ask the union's members, executive or administrative employees, and their families for money for political contributions.¹⁰⁵ Executive or administrative personnel are employees paid a salary, rather than an hourly wage, and have decision-making or supervisory authority.¹⁰⁶

For New York State and New York City campaigns, unions or their separate committees can ask anybody to make a contribution. There are no State or New York City laws that restrict who can be asked to make a donation to the union or its separate committee.

C. Difference #3: Contribution limits imposed on organizations affiliated with unions

1. Federal law combines contributions from affiliated committees under a single limit.

Under Federal law, unions' committees can contribute up to the maximum limit set for each campaign for a U.S. Government office. Unions should be aware that contributions from separate committees connected to a single union or group of unions like a district council (also known as **affiliated committees**¹⁰⁷) are considered to come from a single source.¹⁰⁸ Consequently, a single contribution limit is imposed on the contributions from all of the committees affiliated with a local union. Also, a single contribution limit is imposed on the contributions from all of the committees affiliated to a district council and all the committees affiliated to the district council's member locals. So, for example, if the limit for contributions to a candidate's campaign for federal office is \$2,000,¹⁰⁹ then the combined contributions of all of a union's affiliated committees cannot exceed \$2,000. Also under the same situation, the combined contributions of all of the committees affiliated with members of a district council cannot be more than \$2,000. Basically, this means that each separate committee may not contribute \$2,000 each because that would violate the federal regulations governing single contribution limitations.

2. New York City law does not combine contributions from labor unions and their affiliated organizations

New York State law is silent as to whether a local union's PAC or Political Committee contributions and a District Council's PAC or Political Committee contributions are combined and considered to be from a single source.

¹⁰⁵ 2 U.S.C. §441b(b)(4)(A)-(B); 11 C.F.R. §§ 114.5(g)(2), 114.5(l).

¹⁰⁶ 2 U.S.C. § 441b(b)(7).

¹⁰⁷ 11 C.F.R. §§ 100.5(g)(3)(ii), 110.3(a)(2).

¹⁰⁸ 11 C.F.R. §§ 100.5(g)(2)-(3), 110.3(a)(1)(ii).

¹⁰⁹ 2 U.S.C. § 441a(a)(1)(A).

Under a new law passed by the New York City Council, a local union's PAC or Political Committee contributions and a District Council's PAC or Political Committee contributions are not combined, if certain factors are satisfied.¹¹⁰

You must speak to your union's attorney before making contributions to Federal candidates; the rules are significantly different from what is covered herein and the penalties for violating the federal campaign financing law is severe.

IV. New York State Lobbying Act and New York City Regulation on Lobbying

In addition to contributing to candidates' political campaigns, a union can try to influence lawmakers to vote for or against a specific proposed law or regulation, or to change an existing law or regulation. In general, these attempts to influence lawmakers are called lobbying activities.¹¹¹ Any correspondence or other direct personal contact, on behalf of a union or another person, to convince a lawmaker or other person with decision-making authority to try to get a law passed, defeated, or changed is lobbying activity.¹¹²

The first decision to be made by a union that wants to lobby, is to decide on who will do the lobbying for the union. There are several options. A union can hire an outside person or company to do the lobbying; this option makes the union a Client and the hired person or company would be a Lobbyist. A union can also set up a separate lobbying committee to lobby on the union's behalf; this option makes the union a Client, and the committee would be a Lobbyist. Finally, a union could pick one of its members to do the lobbying; this option makes the union a Client and the chosen member would be a Lobbyist. From this point on, "lobbyist" refers to any company, person or committee of persons that a union chooses to lobby on its behalf; also, "client" also means "union" for the rest of this Overview.

New York City and New York State law prohibits a union from hiring and a lobbyist from agreeing to be hired under conditions where compensation is conditioned on successfully getting a law passed or defeated.¹¹³ A lobbyist commits a Class A misdemeanor by accepting employment under such conditions.¹¹⁴ This means that the lobbyist's compensation cannot be conditioned on successfully influencing an executive, administrative, or legislative action at the State government or New York City government levels.

The second thing a union must decide is whether a State government official or a City government official should be contacted in the effort to influence the passage, defeat, or change of a law.

¹¹⁰ See the discussion at footnotes 23 – 25.

¹¹¹ New York Legislative Law § 1-c(c).

¹¹² New York Temporary State Lobbying Commission, Opinion No. 21 (79-1) (February 8, 1979).

¹¹³ New York Legislative Law § 1-k(a); New York, N.Y. Admin. Code § 3-218.

¹¹⁴ New York Legislative Law § 1-k(b); New York, N.Y. Admin. Code §§ 3-218, 3-223(a).

A. New York City Regulation on Lobbying¹¹⁵

Under the New York City Regulation on Lobbying, lobbying is the attempt to influence the passage or defeat of a local law by the New York City Council, the approval or disapproval of a law by the New York City Mayor, or the adoption or rejection of a New York City agency rule.¹¹⁶ A lobbyist is any person, committee or persons, or company chosen by the union to engage in lobbying.¹¹⁷ The union is a client if it chooses a person, committee of persons or company to lobby on its behalf.¹¹⁸ Under these definitions of lobbyist and client, any individual person who lobbies the city government on his or her own behalf alone, is not a lobbyist.¹¹⁹

If the union decides to lobby only the City government, the union's lobbyist must register with the New York Temporary State Lobbying Commission **and** the New York City Office of the City Clerk. The lobbyist must also file periodic financial reports every two months. Because the union is considered a Client, it also has to file a financial report once a year if it spends or owes more than \$2,000 in reportable compensation and expenses. For example, a Client's reportable compensation and expenses include compensation paid to the lobbyist.

Lobbyists must register with the New York Temporary State Lobbying Commission **and** the New York City Office of the City Clerk if they try to influence the passage or defeat of legislation, executive orders or the election or defeat of a candidate for public office in New York City or the five boroughs.¹²⁰ Any lobbyist who does not expend, incur or receive more than \$2,000 in reportable compensation or expenses is not required to file a registration statement with the New York City Clerk's office.¹²¹ (**Note:** This dollar amount differs from New York State's requirement that a lobbyist, who receives or reasonably anticipates receiving \$5,000 in compensation, must file a registration statement).

Deadlines to File Registration Statements: Lobbyists must register **every year** with the New York City Office of the City Clerk if they actually or reasonably expect to spend, owe or receive more than \$2,000 of reportable compensation in any calendar year.¹²² A union's lobbyist must file the registration statement by January 1st if the lobbyist was hired before December 15th of the last calendar year.¹²³ The union's lobbyist has 15 days to file the registration statement if it was hired after December 15th of the last calendar year, and if the lobbyist reasonably expects to spend, owe or receive more than \$2,000 in reportable compensation and expenses combined.¹²⁴ The union's lobbyist has 10 days to file the registration statement if it is hired after December 15th of the last calendar year and actually receives reportable compensation or incurs reportable expenses of more than \$2,000.¹²⁵

¹¹⁵ New York, N.Y. Admin. Code §§ 3-211—3-223.

¹¹⁶ New York, N.Y. Admin. Code § 3-211(c)(1).

¹¹⁷ New York, N.Y. Admin. Code § 3-211(a).

¹¹⁸ New York, N.Y. Admin. Code § 3-211(b).

¹¹⁹ New York, N.Y. Admin. Code § 3-211(a)-(b).

¹²⁰ New York Legislative Law § 1-e; New York, N.Y. Admin. Code § 3-213.

¹²¹ New York, N.Y. Admin. Code § 3-213(a)(1).

¹²² New York, N.Y. Admin. Code § 3-213(a)(1).

¹²³ New York, N.Y. Admin. Code § 3-213(a)(2).

¹²⁴ New York, N.Y. Admin. Code § 3-213(a)(2).

¹²⁵ New York, N.Y. Admin. Code § 3-213(a)(2).

New York City Lobbyist Registration Fee: The registration statement must be accompanied by a registration fee of \$150 for the first client and \$50 for each additional client.¹²⁶

Lobbyists in New York City must also register with the New York State Temporary Lobbying Commission: All lobbyists must register every two years with the New York State Lobbying Commission if they actually or reasonably expect to spend, owe or receive more than \$5,000 of reportable compensation in any calendar year.¹²⁷ A union's lobbyist must file the registration statement by January 1st if the lobbyist was hired before December 15th of the last calendar year.¹²⁸ The union's lobbyist has 15 days to file the registration statement if it was hired after December 15th of the last calendar year, and if the lobbyist reasonably expects to spend, owe or receive more than \$5,000 in reportable compensation and expenses combined.¹²⁹ The union's lobbyist has 10 days to file the registration statement if it is hired after December 15th of the last calendar year and actually receives reportable compensation or incurs reportable expenses of more than \$5,000.¹³⁰ (Note: This \$5,000 amount is different from New York City's requirement for lobbyists to register if \$2,000 is actually spent, owed or received).

New York State Registration Fees: A union's lobbyist must also pay a registration fee of \$200 to the New York Temporary State Lobbying Commission when filing the first Biennial Registration Statement of the two year period described above.¹³¹ But if the registration statement is first filed at the beginning of the second year in the two-year period, then the registration fee is only \$100.¹³² No registration fee is required if the lobbyist "in any year does not spend, owe or receive more than \$5,000 in reportable compensation and expenses for lobbying."¹³³

Filing Periodic Financial Reports with the New York City Office of the City Clerk: Some lobbyists must file Periodic Reports with the New York City Office of the City Clerk.¹³⁴ However, unlike the requirements of the State Lobbying Act, periodic reports must only be filed if the lobbyist "expends, receives or incurs combined reportable compensation and expenses" that exceed **\$2,000**¹³⁵ (as opposed to the \$5,000 limit under the State Lobbying Act).

The Periodic Report filing schedule is as follows:

January 1st – February's last day
March 1st – April 30th

March 15th
May 15th

¹²⁶ New York, N.Y. Admin. Code § 3-213(e); New York Office of the City Clerk, Lobbying and the City of New York, available at <http://nycmarriagebureau.com/about/lobbyistoutline.html> (last visited January 26, 2006).

¹²⁷ New York Legislative Law § 1-e(a)(3)(i).

¹²⁸ New York Legislative Law § 1-e(a)(4).

¹²⁹ New York Legislative Law § 1-e(a)(4).

¹³⁰ New York Legislative Law § 1-e(a)(4).

¹³¹ New York Legislative Law § 1-e(e)(iii).

¹³² New York Legislative Law § 1-e(e)(iv).

¹³³ New York Legislative Law § 1-e(e)(iii).

¹³⁴ New York, N.Y. Admin. Code § 3-216(a)(1).

¹³⁵ New York, N.Y. Admin. Code § 3-216(a)(1).

May 1st – June 30th
July 1st – August 31st
September 1st – October 31st
November 1st – December 31st

July 15th
September 15th
November 15th
January 15th.¹³⁶

Lobbyists must file Annual Reports with the New York City Office of the City Clerk if they filed a statement of registration the New York City Office of the City Clerk.¹³⁷ The lobbyist's Annual Report is due on the 15th day of January following the year on which the report is based.¹³⁸

Unions, because they are clients of lobbyists, must also file Annual Reports with the New York City Clerk if they spent or owed more than \$2,000 in combined reportable compensation and expenses for lobbying purposes.¹³⁹ The union's Annual Report is due on the 15th day of January following the year on which the report is based.¹⁴⁰

If a lobbyist's employment is terminated, both the union and the lobbyist must each file a written notice of termination with the New York City Office of the City Clerk.¹⁴¹ The lobbyist remains responsible for filing periodic reports for the dates up to the day which lobbying activity by the lobbyist for the union ended.¹⁴²

All reports and statements that must be filed with the New York City Office of the City Clerk should either be mailed or filed in person.¹⁴³ The reports or statements may be mailed to: Lobbyist Registrations, Office of the City Clerk, Municipal Building Room 265, New York, NY 10007.

Any lobbyist or client who violates any provisions of the New York City Regulation on Lobbying is guilty of a Class A misdemeanor and possibly subject to a civil penalty of up to \$15,000 or an order to stop all lobbying activities within the city clerk's jurisdiction.¹⁴⁴

B. New York State Lobbying Act

The State Lobbying Act covers lobbying activities by clients and lobbyists. Lobbyists are persons or other organizations hired and paid by the labor union to lobby on the labor union's behalf.¹⁴⁵ Clients include any labor union that hires and pays any person or organization to lobby

¹³⁶ New York, N.Y. Admin. Code § 3-216(a)(1).

¹³⁷ New York, N.Y. Admin. Code § 3-217(a)(1).

¹³⁸ New York, N.Y. Admin. Code § 3-217(b).

¹³⁹ New York, N.Y. Admin. Code § 3-217(a)(2).

¹⁴⁰ New York, N.Y. Admin. Code § 3-217(c).

¹⁴¹ New York, N.Y. Admin. Code § 3-215.

¹⁴² New York, N.Y. Admin. Code § 3-215.

¹⁴³ New York, N.Y. Admin. Code § 3-221.

¹⁴⁴ New York, N.Y. Admin. Code § 3-223(a).

¹⁴⁵ New York Legislative Law § 1-c(a).

for the union.¹⁴⁶ Lobbying is “any attempt to influence” actions taken by lawmakers like the Governor, a Mayor, a State Senator or State Assembly Member and State Agency Heads.¹⁴⁷

Any committee or person that a union chooses to lobby for it must file a registration statement with the New York Temporary State Commission on Lobbying if their reportable compensation and expenses will be more than \$5,000.¹⁴⁸ Reportable compensation is anything of value like a salary, fee, payment or other benefit that is promised by the union to the lobbyist.¹⁴⁹ Reportable expenses are those expenses owed or paid back to a lobbyist for lobbying activities.¹⁵⁰ A few examples of reportable expenses include advertising, telephone bills, consultation fees, parties or receptions, entertainment or event tickets, food, and beverages.¹⁵¹

1. Registration requirements

Who has to register and file financial reports? A labor union that spends or owes more than \$5,000 in reportable compensation must file financial reports with the State Lobbying Commission because it is the client of a lobbyist.¹⁵² A labor union’s lobbying committee must file a statement of registration and the labor union must file client reports as required by the New York State Lobbying Act.¹⁵³

Safe Harbors: A labor union’s lobbyist that spends, owes, or receives \$5,000 or less in reportable compensation, does not have to register or file any financial reports with the State Lobbying Commission.¹⁵⁴

Deadlines to File Registration Statements with the New York State Temporary Lobbying Commission: Lobbyists must register every two years with the New York State Lobbying Commission if they actually or reasonably expect to spend, owe or receive more than \$5,000 of reportable compensation in any calendar year.¹⁵⁵ A union’s lobbyist must file the registration statement by January 1st if the lobbyist was hired before December 15th of the last calendar year.¹⁵⁶ The union’s lobbyist has 15 days to file the registration statement if it was hired after December 15th of the last calendar year, and if the lobbyist reasonably expects to spend,

¹⁴⁶ New York Legislative Law § 1-c(b).

¹⁴⁷ New York Legislative Law § 1-c(c); New York, N.Y. Admin. Code § 3-211.

¹⁴⁸ New York Legislative Law § 1-e.

¹⁴⁹ New York Temporary State Commission on Lobbying, Guidelines to the Lobbying Act § 5(A)(1) (October 31, 2004), available at <http://www.nylobby.state.ny.us/guidelin.html>.

¹⁵⁰ New York Temporary State Commission on Lobbying, Guidelines to the Lobbying Act § 5(A)(2).

¹⁵¹ New York Temporary State Commission on Lobbying, Guidelines to the Lobbying Act § 5(A)(2).

¹⁵² New York Legislative Law § 1-e; see New York Temporary State Commission on Lobbying, Opinion No. 5 (78-5) (1978), available at <http://www.nylobby.state.ny.us/opino/opinio5.html>; New York Temporary State Commission on Lobbying, Opinion No. 10 (78-10) (1978), available at <http://www.nylobby.state.ny.us/opino/opinio10.html>.

¹⁵³ New York Legislative Law §§ 1-c(a), 1-c(d), 1-e(a).

¹⁵⁴ New York Legislative Law § 1-e; see New York Temporary State Commission on Lobbying, Opinion No. 5 (78-5) (1978), available at <http://www.nylobby.state.ny.us/opino/opinio5.html>; New York Temporary State Commission on Lobbying, Opinion No. 10 (78-10) (1978), available at <http://www.nylobby.state.ny.us/opino/opinio10.html>.

¹⁵⁵ New York Legislative Law § 1-e(a)(3)(i).

¹⁵⁶ New York Legislative Law § 1-e(a)(4).

owe or receive more than \$5,000 in reportable compensation and expenses combined.¹⁵⁷ The union’s lobbyist has 10 days to file the registration statement if it is hired after December 15th of the last calendar year and actually receives reportable compensation or incurs reportable expenses of more than \$5,000.¹⁵⁸

Registration Fees: A union’s lobbyist must pay a registration fee of \$200 when filing the first Biennial Registration Statement of the two year period described above.¹⁵⁹ But if the registration statement is first filed at the beginning of the second year in the two-year period, then the registration fee is only \$100.¹⁶⁰ No registration fee is required if the lobbyist “in any year does not spend, owe or receive more than \$5,000 in reportable compensation and expenses for lobbying.”¹⁶¹

A copy of the New York State Temporary Lobbying Commission’s Statement of Registration is attached in Appendix B.

2. Reporting Requirements

Copies of the Bi-Monthly Report form and the Semi-Annual Report form prepared by the New York State Temporary Lobbying Commission are attached in Appendix B.

a) Bi-monthly Report Requirement for Lobbyists

A union’s lobbyist must file Bi-Monthly Reports with the Lobbying Commission by the fifteenth day following the reporting period if it filed a registration statement and it spent, owed, or received more than \$2,000 in reportable compensation and expenses.¹⁶² If the Bi-Monthly Report is filed late, the Lobbying Commission may charge a \$25/day penalty until the report is filed.¹⁶³ The Bi-Monthly Report filing schedule is as follows:

January 1 st – February’s last day	March 15 th
March 1 st – April 30 th	May 15 th
May 1 st – June 30 th	July 15 th
July 1 st – August 31 st	September 15 th
September 1 st – October 31 st	November 15 th
November 1 st – December 31 st	January 15 th ¹⁶⁴

On the Bi-Monthly Report, among other things, lobbyists must report the expenses owed. If certain expenses are less than \$75 in total, then the expenses can be grouped together on the report; on the other hand, each expense that exceeds \$75 must be itemized with details as to the

¹⁵⁷ New York Legislative Law § 1-e(a)(4).

¹⁵⁸ New York Legislative Law § 1-e(a)(4).

¹⁵⁹ New York Legislative Law § 1-e(e)(iii).

¹⁶⁰ New York Legislative Law § 1-e(e)(iv).

¹⁶¹ New York Legislative Law § 1-e(e)(iii).

¹⁶² New York Legislative Law § 1-h(a).

¹⁶³ New York Legislative Law § 1-h(c)(3).

¹⁶⁴ New York Legislative Law § 1-h(a).

exact amount, who was owed the debt, and the expense's purpose.¹⁶⁵ Expenses that exceed \$50 must be paid by a check or documented with receipts, which the lobbyist should keep.¹⁶⁶

b) **Semi-Annual Report requirement for Clients**

A union, because it is a client of a lobbyist, must file Semi-Annual Reports, which are due on July 15th and January 15th of each year, if the Client expended or incurred more than \$5,000 for lobbying purposes.¹⁶⁷ The Semi-Annual Report must be filed regardless of whether the union's lobbyist was required to file a Bi-Monthly Report.¹⁶⁸

Semi-Annual Fees: The Client must also pay a \$50 fee when filing the Semi-Annual Report,¹⁶⁹

For each day the report is late, the Lobbying Commission may charge a penalty of up to \$25/day.¹⁷⁰

On the Semi-Annual Report, among other things, unions must report expenses owed. If a category of expenses is less than \$75 in total, then the expenses can be grouped together on the report; on the other hand, each expense that exceeds \$75 must be itemized with details as to the exact amount, who was owed the expense, and the expense's purpose.¹⁷¹ The union must report expenses that were more than \$50 and paid by a check as required by the Lobbying Act¹⁷² These expenses must be documented with receipts, which the union should keep.¹⁷³

3. **Miscellaneous provisions**

A union or its lobbyist can only give gifts to a public official if the total value of those gifts is not more than \$75.¹⁷⁴ Gifts are anything of value, which include food or meals, beverages, and entertainment or event tickets.¹⁷⁵ Public Officials include the governor, lieutenant governor, comptroller, attorney general, members of the state legislature, heads of state agencies, state departments, municipal agencies, municipal departments; officers and employees of officials elected statewide; and, the state legislature's officers and employees.¹⁷⁶ Until recently, the \$75 limit was considered to be a limit per object or per event (i.e., \$75 per dinner, \$75 per

¹⁶⁵ New York Legislative Law § 1-h(b)(5)(ii).

¹⁶⁶ New York Legislative Law § 1-h(b)(5)(v).

¹⁶⁷ New York Legislative Law § 1-j(a)-(b).

¹⁶⁸ New York Legislative Law § 1-j(a).

¹⁶⁹ New York Legislative Law § 1-j(c)(3).

¹⁷⁰ New York Legislative Law § 1-j(c)(3).

¹⁷¹ New York Legislative Law § 1-j(b)(5)(ii).

¹⁷² New York Legislative Law § 1-j(b)(5)(v).

¹⁷³ New York Legislative Law § 1-j(b)(5)(v).

¹⁷⁴ New York Legislative Law § 1-m.

¹⁷⁵ New York Legislative Law § 1-c(j).

¹⁷⁶ New York Legislative Law § 1-c(l).

golf outing).¹⁷⁷ Now, the Lobbying Commission wants to impose a \$75 combined events limit for the calendar year, so that no more than \$75 may be spent in total on all gifts to a public official in any calendar year.¹⁷⁸ The Lobbying Commission issued two advisory opinions in 2005 that suggested this interpretation of the law.¹⁷⁹ The Lobbying Commission is currently collecting comments on a set of draft guidelines in which the \$75 limit is specifically noted as being a combined limit for the calendar year.¹⁸⁰

4. **Penalties**

Any client or lobbyist who knowingly and willfully fails to file a bi-monthly or semi-annual report in a timely manner or who gives a gift in excess of \$75 is guilty of a Class A misdemeanor and subject to a civil penalty of up to \$25,000.¹⁸¹ If the Lobbying Commission intends to impose a civil penalty, it must first send notice of the intent and the basis for imposing the penalty.¹⁸² A client or lobbyist who knowingly and willfully files a false report may be subject to a civil penalty of \$50,000 or less.¹⁸³

Failure to retain the reports and statements as required by the Lobbying Act can result in a civil penalty of up to \$2,000.¹⁸⁴

V. Special Concerns for Public Sector Unions That Use Agency Fee Deductions for Lobbying

Public sector employees are free to make voluntary political donations to the labor union or its committees as long as no state officer or employee used his or her authority to influence or force an employee to contribute.¹⁸⁵

Non-member public sector employees in the bargaining unit are entitled to a refund of part of their agency fee deduction if they object to the union's use of treasury money for political activities, including lobbying.¹⁸⁶ Please refer to Section II for a discussion of non-member employees' rights.

¹⁷⁷ New York State Temporary Lobbying Commission, Opinion No. 60 (05-05) (April 5, 2005), *available at* <http://www.nylobby.state.ny.us/opino/opinio60.html>; New York State Temporary Lobbying Commission, Opinion No. 61 (05-06) (April 5, 2005), *available at* <http://www.nylobby.state.ny.us/opino/opinio61.html>;

¹⁷⁸ New York State Temporary Lobbying Commission, Opinion No. 60 (05-05); New York State Temporary Lobbying Commission, Opinion No. 61 (05-06).

¹⁷⁹ New York State Temporary Lobbying Commission, Opinion No. 60 (05-05); New York State Temporary Lobbying Commission, Opinion No. 61 (05-06).

¹⁸⁰ New York Temporary State Commission on Lobbying, Staff Draft Guidelines to the Lobbying Act (December 28, 2005), *available at* <http://www.nylobby.state.ny.us/draftguidelines.html>.

¹⁸¹ New York Legislative Law § 1-o(a)-(b).

¹⁸² New York Legislative Law § 1-o(b).

¹⁸³ New York Legislative Law § 1-o(c).

¹⁸⁴ New York Legislative Law § 1-o(e).

¹⁸⁵ *Abood v. Detroit Board of Education*, 431 U.S. 209, 234-35 (1977).

¹⁸⁶ New York Civil Service Law § 208(3)(b); *Warner v. Board of Education of Gates Chili Central School District*, 99 Misc.2d 251, 254-55 (N.Y. Supreme Court 1979); New York Attorney General Formal Opinion 84-F3, 1982 N.Y. Opinion Attorney General 28 (May 23, 1984).

HELPFUL CONTACT INFORMATION

For questions regarding contributions, contribution limits, registration and financial reporting:

New York State Board of Elections
40 Steuben Street
Albany, NY 12207-2108
Campaign Finance Information Tel. No.: (800) 458-3453

New York City Board of Elections
32 Broadway, 7th Floor
New York, NY 10004-1609
Tel: (212) 487-5300

New York City Campaign Finance Board
40 Rector Street, 7th Floor
New York, NY 10006
Tel: (212) 306-7100

For questions regarding lobbying, registration and financial reporting:

New York Temporary State Lobbying Commission
Two Empire State Plaza, Suite 1701
Albany, New York 12223-1254
Tel: (518) 474-7126

New York City Office of the City Clerk
Lobbyist Registrations
Municipal Building, Room 265
New York, NY 10007
Tel: (212) 669-8171 or (212) 669-2778

Contact information for Cary Kane LLP:

Cary Kane LLP
1350 Broadway, Suite 815
New York, NY 10018
Tel: (212) 868-6300