

Lobbying: Compliance is in the Details

A little known provision in the New York State Lobbying Act imposes a reporting requirement on organizations that are registered with the Joint Commission on Public Ethics ("JCOPE") and submit reports for lobbying activities, including colleges and universities. The Public Integrity Reform Act of 2011 amended Legislative Law 1-A to create disclosure requirements for Reportable Business Relationships ("RBR"). The RBR provision has also been incorporated into the new JCOPE lobbying regulations (Title 19 Part 943 of the New York Code of Rules and Regulations) that were finalized in September and will take effect January 1, 2019. With the possibility of increased enforcement on the horizon, now is the time to assess compliance with the RBR reporting obligation.

The RBR obligation requires lobbyists, and "Clients" (any organization that engages in lobbying, whether through its own employees or contracted lobbyists) to report to JCOPE any compensation arrangement where a "State Person" provides goods or services to the organization in exchange for more than \$1,000 in compensation in any consecutive 12-month period. This includes employment arrangements, such as adjunct faculty positions, when the employee is a "State Person." "State Person" is defined extremely broadly to include not only public officials such as state officers and members of the Legislature, but also employees of state agencies in any capacity. In addition, the RBR obligation covers compensation arrangements between "Clients" and non-governmental third parties in which a State Person is a proprietor, partner, director, officer or manager of the third party, or owns or controls more than 10% of the non-governmental entity's stock. The overall scope of the RBR obligation is very significant.

Lobbyists and "Clients" are required to file RBR reports when they know or have reason to know, that an employee or contractor is a State Person. Neither the statute nor the regulations, prescribe any particular process that an organization needs to follow to determine if its employees or contractors are State Persons-in other words, an organization does not have an affirmative obligation to collect data. The regulations state that an organization has "reason to know" if a reasonable person, knowing the nature of the relationship between the State Person and the Client, the nature of the services, and whether the fact that the individual is a State Person is generally known to the public, would know that the individual as a State Person. For instance, a college employing a state commissioner or legislator as an adjunct has reason to know that the adjunct is a State Person.

To date, few organizations across the state have filed RBR reports and many may not even be aware that they are subject to the obligation. While JCOPE has not actively enforced the obligation to date, the Legislative Law authorizes civil penalties of up to \$25,000 per violation for knowingly and willfully failing to file the report in the timeframe required and up to \$50,000 per violation for false reports. With the new regulations taking effect January 1, additional enforcement may be forthcoming. If your organization submits Statements of Registration and bi-monthly lobbyist reports, or semi-annual Client reports to JCOPE, your organization is subject to the RBR requirement. The Lobbying Laws and Regulations are not models of clarity, and organizations with concerns that they are subject to the obligation, or with general questions about JCOPE compliance, should seek guidance from counsel. Please contact [Matt Young](#), or the attorney in the firm with whom you are regularly in contact.



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