

## **Changes to Illinois Campaign Disclosure Act**

In June 2010, the Illinois State Board of Elections made significant changes to the Campaign Disclosure Act. Many changes to the law were effective July 1, 2010, and all provisions are fully implemented as of January 1, 2011. Unfortunately, many provisions of the law are unclear and subject to interpretation. Based on conversations with the Illinois AFL-CIO and its attorneys, following are recommendations that should be implemented as soon as possible to comply with the new law. Please note that the Illinois AFL-CIO is waiting for clarification on much of the new law but has made these recommendations based on the legislative intent in crafting the language of the law.

Prior to the new law, a separate segregated fund that was funded solely with dues money from a labor organization was not considered a political action committee (PAC) by the Illinois State Board of Elections and consequently did not have any Illinois filing requirement. Under the new law, all but the smaller funds will be considered a PAC and the disclosure rules will apply.

### **Definition of Political Action Committee**

An organization, including a labor organization, which accepts contributions or makes expenditures supporting or opposing a candidate for public office exceeding \$3,000 during a calendar year, is now considered a PAC under the Illinois Campaign Disclosure Act. Consequently, a labor organization that makes political expenditures in excess of \$3,000 should do so through its existing separate segregated fund, or it should set one up. If the labor organization makes such expenditures out of its general fund, the organization itself may be considered a PAC and subject to the reporting requirements. In addition, once transfers to a labor organization's separate segregated fund exceed \$3,000, the fund must register with the State Board of Elections as a PAC by filing Form D-1 and it must make the required periodic reporting of receipts and expenditures on Form D-2. Form D-1 is due within 10 days of either creation for new PACs, or exceeding the \$3,000 limit for existing separate segregated funds. Communications from a labor organization to its members are not considered political expenditures and therefore are not included in determining the \$3,000 limit. Payments for such communications should be made out of the labor organization's general fund.

### **Designation of Political Committees**

All PACs are designated as one of four committee types – Candidate Political Committee, Political Party Committee, Political Action Committee or Ballot Initiative Committee. In general, the PAC of a labor organization is Political Action Committee. A PAC's name must include the name of the organization responsible for its formation. Also, under the new rules, an organization can only establish or maintain one PAC at a time.

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**Independent Expenditures**

Based on a U.S. Supreme Court decision, there are no longer restrictions on communications by an organization, including labor organizations, either supporting or opposing a candidate for political office that is directed at the public. As a result, organizations can pay for communications such as radio and television ads directly without going through a candidate or their PAC. The Illinois campaign disclosure law has been modified to reflect this change. A new category of expenditure, "independent expenditure," has been created and may result in additional disclosure requirements. An independent expenditure is not considered to be a contribution and should not be reported as one. However, under this provision, any entity spending more than \$3,000 in independent expenditures in aggregate during a year must file with the State Board of Elections.

**Campaign Contribution Limits**

For the first time Illinois is imposing campaign contribution limits. Effective January 1, 2011, the maximum contribution by a PAC to another PAC is \$50,000. The limits on contributions to candidate committees apply to an election cycle while those for political party and PACs apply to a calendar year. The limits are imposed on the committee receiving the contribution.

**Funding Labor Organization PACs**

There are special rules for funding labor organization PACs with member dues. In general, the Act allows a labor organization to act as a conduit for the delivery of contributions through its dues **provided** the organization maintains a list of members who paid the dues designated as contributions. The labor organization is allowed to make the designation (either as a fixed amount per member or a percentage of dues collected.) The contributions are deemed to be from the individual members and consequently are subject to the members' contribution limit. The contribution to the PAC may be reported in the name of the labor organization provided the aggregate contributions for the year do not exceed \$150 per member.

**Federal Requirements**

PACs that exceed certain limits are required to file Form 8871 and periodic Forms 8872 with the IRS. A PAC that files the required Illinois Form D-2 does not have a Form 8872 filing requirement and should file an amended Form 8871 to indicate the change.

The changes to Illinois rules do not affect the federal tax on political contributions. Consequently, in order to avoid federal tax on transfers to a PAC, the labor organization must make sure to continue to segregate any dues transferred.

The above is a summary of the new rules as we understand them today. Again, many of the provisions are subject to interpretation. Let us know if you have any questions.

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