

Advocacy Coalition Agreements

Working with others is often the best way to achieve a policy goal. However, working in a coalition has legal implications that should be discussed and dealt with in a membership agreement before the coalition begins its work. Here are issues that coalition members should discuss:

- ✓ *Who owns jointly created reports, websites, and mailing lists?*

Coalitions often produce valuable intellectual property. Tricky ownership issues can arise when multiple coalition members contribute to a single report or if they all use a coalition logo.¹ Clarifying who may use these resources during and after the life of the coalition will avoid disputes later.

- ✓ *Who will pay the expenses necessary for the Coalition's work?*

An agreement that specifies how expenses will be shared and who is responsible for paying them can help avoid misunderstandings later.

- ✓ *How will any funds raised for the coalition's work be maintained and shared? Will one member grant or subgrant funding to other members?*

Many coalitions need funding to staff their work and pay other expenses. Confirming who raises the funds, and who maintains them, will help insure that the coalition will have the resources it needs to be successful. If one coalition member will make grants to the others, grant agreements should spell out the grant terms, including whether the recipient's lobbying and/or political activities will be attributed to the grantor.

- ✓ *What responsibility and potential liability do coalition members have regarding the people performing work for the coalition?*

A coalition member may become a joint employer (potentially incurring liability for violations of wage and hour rules and other laws) if it exercises the power to hire or fire, supervises or controls the work schedule or conditions of employment, determines the rate or method of compensation, maintains employment records, or agrees to share the employee's services. Documenting who has the authority to supervise and direct the work of coalition staff can help avoid unanticipated liability.

¹ For more information about legal issues that arise when a document has many different contributors see Lawyers Alliance's legal alert "Development and Use of Joint Works, Collective Works, and Derivative Works," available at https://lawyersalliance.org/userFiles/uploads/legal_alerts/Joint_Collective_and_Derivative_Works_Legal_Alert.pdf

- ✓ *Who can claim to speak on the coalition's behalf, or claim credit for its work?*

Inconsistent messaging can create confusion and undermine the public aspects of a coalition's campaign. Communications on partisan political issues, or with lobbying content, can trigger advocacy compliance obligations. Attacks on companies and individuals can create a risk of defamation lawsuits. For all of these reasons, it is important to identify who has authority to speak on the coalition's behalf and what those messages will be.

- ✓ *How will the members deal with potential conflicts of interest?*

Coalition partners may compete for funding, be tempted to enter into side deals, and undertake non-coalition work that members (or their funders) disapprove of. Members should establish a process to disclose and resolve such conflicts.

- ✓ *What data sharing and confidentiality protocols does the coalition have in place?*

Members may need to share sensitive materials such as individuals' medical, legal or financial information (which may be legally protected); member organizations' internal information; and coalition strategy documents. Clarifying the ground rules for maintaining and distributing such information, and requiring coalition partners to agree to those ground rules, can help avoid liability and disagreements.

- ✓ *How will coalition members manage risk?*

Coalition members may work at each others' offices, provide each other with transportation, or engage in other acts giving rise to liability for each others' actions. Coalition members can protect themselves through simple legal tools, such as agreements regarding indemnification, waivers of liability and insurance.

- ✓ *If some members engage in partisan political activity, what protocols will be used to protect the tax exempt status of other members that are public charities?*

Coalitions often include 501(c)(4) social welfare organizations or labor unions, which are permitted to engage in partisan political activity. Setting the ground rules for electoral activity in the coalition's communications and activities can avoid jeopardizing a 501(c)(3) organization's tax exempt status.

- ✓ *Will the coalition engage in lobbying?*

Sometimes, a coalition must use legislative or administrative advocacy in order to achieve its objectives. If so, will all members participate? Will any coalition members have to register as a lobbyist as a result of their participation in the coalition? Resolving these questions at the outset can help coalition members avoid becoming the target of regulatory enforcement actions.

Lawyers Alliance staff are available to help eligible nonprofits draft coalition agreements regarding data privacy and other issues. Please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org, (212) 219-1800 x283, or visit www.lawyersalliance.org for further information.

This alert is meant to provide general information only, not legal advice. It is no substitute for working with an attorney familiar with all of the relevant facts.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.