

Minimizing OSHA Personal Liability Issues

Corporate officers and directors often express concern about potential personal liability for employee health and safety matters. The federal statutory regime that regulates employers and employees with respect to workplace safety is the Occupational Health and Safety Act of 1970 (the Act). The Act is administered by the Occupational Health and Safety Administration (OSHA) of the U.S. Department of Labor. In general, the corporation which employs workers, not an individual who owns or works for the corporation, is liable for penalties under the Act. There is no statutory basis to extend liability under the Act to individual supervisors, officers or directors—only to the actual "employers" of the workers. However, OSHA occasionally has sought to "pierce the corporate veil" to impose individual liability for OSHA penalties on owners, directors, officers, and managers of corporate employers in very egregious situations. OSHA generally makes such efforts when OSHA concludes there has been extreme disregard for safety and conscious inaction or obfuscation by the individuals involved and/or if OSHA believes that a corporate shell is being improperly used to shield liability. Of course, OSHA's attempts to impose personal liability on individuals, rare though they are, are met with great resistance legally.

Even if OSHA does not take such drastic action, however, if an accident results in death or serious injury, local district attorneys and other law enforcement officials also will assess the situation to determine if criminally negligent or intentional misconduct was responsible for the incident. Potentially, they can bring criminal charges (such as involuntary manslaughter) against individuals in exceptional cases. Again, the standard of conduct and involvement required is quite significant and would not be expected to flow to officers and directors of a company unless they had actual knowledge of intentional wrongdoing or directly caused a dangerous situation.

The best ways to protect against these risks are to secure reasonable insurance that covers corporate liability for accidents; ensure that proper governance practices are followed to make the risk of "piercing the corporate veil" even more remote; and make monitoring workplace safety and health issues part of a comprehensive compliance program. (Insurance policies also can include protection for officers and directors to further insulate them from financial risk.)

We often help our corporate clients to conduct OSHA compliance audits and to comply with the relevant and applicable OSHA regulations as a way to minimize

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potential corporate and personal liability for on-the-job safety and health issues. Employers also should consider tailoring their standard contracts with vendors and contractors to appropriately address who has contractual responsibility for employee safety. An employer cannot assign its legal responsibility under the Act, but it is worth looking at whether the issue of occupational safety is properly addressed in contracts. The ultimate goal of these reviews is to proactively minimize potential OSHA liability issues for everyone involved in matters of workplace safety.

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