

OSHA Considering Whether to Impose Personal Liability on Owners of Cited Employers

The Occupational Safety and Health Review Commission ("OSHRC") is considering two very important issues related to OSHA enforcement. First, OSHRC is determining whether OSHA can "pierce the corporate veil" and impose personal liability on owners, successors or alter egos of the cited employer. Second, OSHRC will soon determine whether OSHA can cite a business found to be an employer's successor or alter ego for repeat health and safety violations. OSHRC's determinations on these issues have the potential to dramatically change the legal landscape for employers.

These issues have arisen in four cases presently pending before OSHRC. In one case, the OSHRC Administrative Law Judge ("ALJ") assessed \$196,000 in penalties against the employer. The ALJ refused to pierce the corporate veil and did not hold the owners personally liable for the OSHA violations. In two other cases, the ALJ did pierce the corporate veil and found two business owners personally liable in the amount of \$96,000 for the OSHA violations.

In the fourth case, the company received a willful and a repeat citation after an employee fell off of a building under construction. Here, the ALJ affirmed one citation as repeat based on his finding that the cited corporation was both the successor and alter ego of a related employer that previously violated the OSHA. In other words, the ALJ found that a legally separate employer, which had been previously cited, was, in fact, an alter ego or successor of the second most recently cited employer. Without such a finding, the ALJ could not find a repeat violation and impose the higher repeat penalties.

The Reinhart OSHA Practice Group has been monitoring these cases since early 2004 and submitted an amicus curiae brief in opposition to OSHRC's attempt to expand upon its statutory authority. It is our position that OSHRC can only exercise the authority provided to it by Congress. Neither the Occupational Safety and Health Act nor the Administrative Procedure Act gives OSHRC the authority to pierce the corporate veil, leading to personal liability or base repeat violations on the actions or inactions of a purported predecessor or alter ego.

We have further argued that OSHRC's express statutory remedial authority is broad and more than adequate to attain the statute's policy goals. Therefore, to resort to equitable principles such as piercing the corporate veil is

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unnecessary.

The OSHA Practice Group will keep clients and friends of the firm abreast of developments regarding these issues.

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