Personal Liability of CEOs for OSHA Violations



Make sure your CEO understands that he or she can be held personally liable for certain safety violations. Give your CEO this briefing to make your case.

OSHA cited two New Jersey corporations for willful violations. One citation carried a $96,300 fine; the other a $196,000 fine. In both cases, OSHA also cited the father-and-son team that owned the corporations. The father was the president and the only officer and director of both corporations. The son, a lawyer whose only clients were the corporations, ran the corporate offices out of his basement.

Corporate officers normally aren't personally liable for the OSHA violations of their companies. But in this case OSHA argued that because the corporations had no "distinct personalities," the father and son should be personally liable for the fines. The Administrative Law Judge (ALJ) in the $96,300 case agreed; but the ALJ in the other case didn't. The Occupational Safety and Health Review Commission is currently considering both cases *[Sec. of Labor v. Avcon, Inc.; Sec. of Labor v. Altor, Inc.].*

The Threat Of Individual Liability

The *Avcon* and *Altor* cases show that OSHA intends to be more aggressive in seeking to "pierce the corporate veil"-that is, holding individual directors, officers and shareholders (which, for simplicity sake, we'll refer to collectively as "officers") personally accountable for the safety violations their companies commit. The Secretary of Labor in these cases is advancing a theory that would make it much easier for OSHA and courts to pierce the corporate veil. If she succeeds, individual officers may find themselves writing checks for hefty fines, and maybe even spending time in prison.

The Solution

How can you keep OSHA and the courts from piercing the corporate veil? Answer: Keep your corporation's legal identity separate from your own. You have to engage in an ongoing analysis of the way the corporation conducts its business, and the way officers interact with the company. Specifically, there are three questions you need to ask to determine if you're doing enough to protect against

individual liability:

1. Are you and the other officers observing all corporate formalities?
2. Are you keeping your personal assets separate from the company's business assets?
3. Are you avoiding conduct that could suggest that the corporation is your alter ego?

The Explanation

Here's why you should ask and how you can answer each of these questions to assess your vulnerability to piercing of the corporate veil:

1. Corporate Formalities

Corporations are organized under state corporation laws. The people who create and run a corporation must observe certain formalities to ensure the corporation is treated like a separate legal entity under the corporation laws including:

- Filing all incorporation papers;
- Filing all annual reports;
- Holding shareholder meetings at least once a year;
- Holding director meetings at least once a year;
- Keeping minutes of all shareholder and director meetings;
- Properly documenting all issuances of corporate stock;
- Issuing consents in lieu of meetings for actions taken without a formal meeting; and
- Keeping other records.

Keeping Corporate and Personal Assets Separate

The corporation is supposed to be a distinct "person" under the law, one that's separate from its owners. For a corporation to be treated as a separate person, its assets must be truly its own and not the personal assets of its officers. The corporation's assets must be kept separate from and not "commingled" with the officers' assets. Accordingly, you should make sure the corporation:

- Has its own bank accounts;
- Maintains separate offices;
- Owns or leases its own equipment;
- Documents any loans to or from officers; and
- Refrains from paying the officers' personal obligations.

Treating the Corporation as Your Alter Ego

Officers need to understand that if they act like the corporation is there to serve their personal interests, OSHA and the courts may consider the corporation their alter ego, pierce the veil and hold them personally liable for the corporation's OSHA fines and criminal penalties.

When officers act in the corporation's name, those actions should be for legitimate business purposes. They shouldn't be for the officer's personal gain. And, one person shouldn't be the sole officer, director and shareholder of the corporation. Otherwise, OSHA and the courts may find that there's no real difference between the shareholder and the corporation; that the corporation was

in fact that individual’s “alter ego.”

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